

USDC SCAN INDEX SHEET



USA

CARLISI

TLW

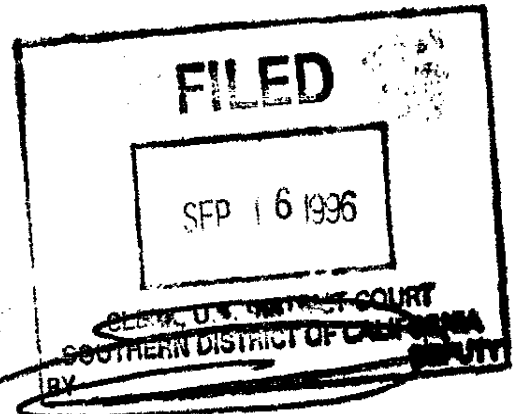
3:92-CR-00026

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*CRMEMP. *

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 3 CAROL C. LAM
 4 Assistant U.S. Attorney
 5 California State Bar Nos. 129412
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 8 San Diego, California 92101-8800
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10 Attorneys for Plaintiff
 11 United States of America



12 UNITED STATES DISTRICT COURT

13 SOUTHERN DISTRICT OF CALIFORNIA

14 UNITED STATES OF AMERICA,	)	Criminal Case No. 92-0026-E
	)	Civil Case No. 96-1101-E
15 Plaintiff,)	
16 v.)	
	)	GOVERNMENT'S RESPONSE AND
	)	OPPOSITION TO DEFENDANT'S
17 MICHAEL CLEMENT CARACCI	)	MOTION PURSUANT TO
	)	28 U.S.C. § 2255 TO
18 Defendant	)	VACATE SENTENCE AND REMAND FOR
	)	RESENTENCING

19 COMES NOW the plaintiff, UNITED STATES OF AMERICA, by and
 20 through its counsel, Alan D. Bersin, United States Attorney, and
 21 CAROL C. LAM, Assistant United States Attorney, and hereby submits
 22 its response and opposition to defendant's motion pursuant to 28
 23 U.S.C. § 2255 to vacate sentence and remand for resentencing.

24 DATED: September 16, 1996

25 Respectfully submitted,

26 ALAN D. BERSIN
 27 United States Attorney

28 *Carol C. Lam*
 CAROL C. LAM
 Assistant U.S. Attorney

29 RCL:lh (carresp.mot)
 30 September 16, 1996

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I

STATEMENT OF FACTS

Defendant Michael J. Caracci was indicted with nine co-conspirators in the case of United States v. Samuel Anthony Carlisi, Criminal Case No. 92-0026-E, on January 9, 1992. Several defendants pleaded guilty and received sentences ranging from 6 months to 114 months; four defendants went to trial, including Sam Carlisi, John DiFronzo, Donald John Angelini, and Nicholas DePento. Defendant Caracci was severed from trial due to a heart ailment.

Following completion of the trial,^{1/} on April 19, 1993, Caracci pleaded guilty pursuant to a written plea agreement to Count 1 (conspiracy), Count 9 (wire fraud), Count 11 (extortion of Joseph Pignatello), Count 13 (extortion of Sarge Ferris), Count 14 (extortion of George Macey), and Count 15 (RICO). On July 6, 1993, defendant Caracci was sentenced to 71 months in custody. The plea agreement provided that if the sentence imposed was not more than 71 months, defendant would waive appeal; therefore, no direct appeal from the conviction or sentence was filed. On June 19, 1996, defendant filed a motion to vacate his sentence pursuant to 28 U.S.C. § 2255.

^{1/}Defendants DiFronzo and Angelini were convicted of several counts of mail and wire fraud in connection with a scheme to defraud the Rincon Indians; the jury hung or acquitted Carlisi and DePento as to the counts in which they were charged, and the Government ultimately dismissed all counts against these two defendants.

II

DISCUSSION

A. DEFENDANT'S CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL ARE NOT SUPPORTED BY THE RECORD

Defendant challenges his sentence based on claims of ineffective assistance of counsel, asserting that (1) his counsel failed to advise him that he would be waiving appeal under certain circumstances; (2) his counsel failed to explain the application of "units" in the calculation of the sentencing guideline range; and (3) his counsel failed to challenge the use of "dismissed counts" in the RICO calculation. These claims are meritless.

1. Waiver of Appeal

Defendant contends that there was no valid waiver of his appeal rights. However, paragraph 11 of the written plea agreement, signed by the defendant, leaves no uncertainty that defendant understood this provision of the agreement. Paragraph 11 reads:

The Defendant agrees that he will waive his right to appeal from the sentence imposed by the Court, provided that the custodial sentence does not exceed 71 months.

Exhibit 1. During the taking of the plea, the defendant stated that he was 54 years old and had a high school equivalency degree.

Exhibit 2, page 3. The following colloquy then took place:

THE COURT: YOU HAVE HAD AN OPPORTUNITY TO READ OVER THE ELEMENTS [of the plea agreement] WITH YOUR LAWYER AND DISCUSS IT WITH HIM BEFORE YOU SIGNED IT; IS THAT CORRECT?

THE DEFENDANT: YES, I DID.

. . . .

1 THE COURT: HAVE YOU HAD ANY DRUGS OR MEDICATION IN THE
2 LAST THREE DAYS?

3 THE DEFENDANT: JUST NORMAL, ASPIRIN.

4 THE COURT: YOU FEEL IN FULL POSSESSION OF YOUR FACULTIES
5 NOW?

6 THE DEFENDANT: YES.

7 THE COURT: HAVE YOU TOLD YOUR LAWYER ALL THE FACTS AND
8 CIRCUMSTANCES ABOUT THIS CASE?

9 THE DEFENDANT: I HAVE.

10 THE COURT: YOU HAVE A CLEAR UNDERSTANDING OF BOTH THE
11 CHARGES AGAINST YOU AND THE CONSEQUENCES OF
12 YOUR PLEA?

13 THE DEFENDANT: I HAVE.

14

15 THE COURT: I WOULD ASK YOU, MR. CARACCI, HAVE YOU HAD AN
16 OPPORTUNITY TO READ AND DISCUSS THE PLEA
17 AGREEMENT BEFORE YOU SIGNED IT WITH YOUR
18 LAWYER?

19 THE DEFENDANT: YES.

20 Exhibit 2, pp. 6-8. The language of the plea agreement was clear,
21 and defendant acknowledged having read and reviewed it with his
22 lawyer before signing it. A written waiver of appeal is
23 acceptable even in the absence of an oral colloquy reaffirming the
24 waiver. United States v. DeSantiago-Martinez, 38 F.3d 394 (9th
25 Cir. 1994). In any event, defendant has now certainly waived
26 his right to appeal by failing to timely file a notice of appeal
27 after he was sentenced.

28 2. Sentencing Guideline calculations.

Defendant claims that his attorney failed to explain the
application of "units" in the calculation of the sentencing
guideline range, and thereafter failed to challenge the guideline

1 calculations. A review of the presentence report and the
2 Sentencing Guidelines, however, reflects that the Guidelines were
3 properly applied in defendant's case, and defendant's claim of
4 incompetency of counsel is meritless.

5 Defendant pleaded guilty to, among other counts, Count 15 of
6 the Indictment. Count 15 was the RICO count and encompassed six
7 predicate offenses, including mail and wire fraud against the
8 Rincon Indians, and the extortions of Joseph Pignatello, Ross
9 Lantieri, Sarge Ferris, George Macey, and Robert Veltri. See
10 Indictment, attached as Exhibit 3. Defendant was personally
11 involved in all the predicate offenses. For RICO offenses,
12 U.S.S.G § 2E1.1 provides:

13 (a) Base Offense Level (Apply the greater):

14 (1) 19; or

15 (2) the offense level applicable to the underlying
16 racketeering activity.

17 The Commentary to § 2E1.1 clearly instructs:

18 Where there is more than one underlying offense, treat each
19 underlying offense as if contained in a separate count of
conviction for the purposes of subsection (a)(2).

20 In this case, the probation department correctly determined
21 that the Rincon fraud, and each extortion, should be treated as
22 "separate counts of conviction." Accordingly, the probation
23 department applied the "Multiple Counts" section of the Guidelines
24 (§ 3D1.4).

25 Pursuant to the Guidelines, probation took the offense level
26 for extortion (level 20) (U.S.S.G. § 2E1.1), adjusted it upward
27
28

1 for defendant's role in the offense (+3), added five points^{2/}
2 for the other four extortions and the fraud, for a combined
3 Adjusted Offense Level of 28. Thus there was no error in the
4 calculation, and no incompetency of counsel in failing to
5 challenge the application of the "units" under the "Multiple
6 Counts" section of the Guidelines.^{3/}

7 3. Use of "Dismissed Counts".

8 Defendant complains that his counsel failed to challenge the
9 use of "dismissed counts" in the RICO calculation. This argument
10 is frivolous. While the Government agreed to dismiss certain
11 substantive counts of the indictment pursuant to the plea
12 agreement, the conduct described in those counts were indeed
13 reflected in the predicate offenses in the RICO count and were
14 therefore properly considered in the calculation of the sentencing
15 guidelines for the RICO count.^{4/} Hence counsel was not
16 "incompetent" for failing to challenge this aspect of the
17 Guidelines calculation.

18 Finally, defendant's claim that competent counsel would have
19 challenged the indictment on multiplicity grounds should be

20 ^{2/}Five is the maximum number of units that can be added
21 pursuant to the Guidelines. U.S.S.G. § 3D1.4.

22 ^{3/}Defendant's reliance on the case of United States v.
23 Pearson, 911 F. 2d 186, 190 (9th Cir. 1990) for the proposition
24 that units enhance only criminal history, not the base offense
25 level, is erroneous. Section 3D1.4 of the Sentencing Guidelines
clearly provides for enhancement of the base offense level using
a "unit" calculation where multiple counts of conviction are
involved.

26 ^{4/}The cases cited by defendant on page 7 of his motion do not
27 involve calculations of RICO sentences, and therefore are not
28 relevant to this case.

1 rejected. The indictment was not multiplicitous for having
2 alleged the same acts as violations of 18 U.S.C. §§ 371 and 894
3 (conspiracy), RICO, and the substantive counts in the indictment.
4 The law is clear that an indictment is not multiplicitous so long
5 as each charged offense requires proof of at least one additional
6 fact not required to prove any other offense. Blockburger v.
7 United States, 284 U.S. 299 (1931); United States v. Sehnal, 930
8 F.2d 1420, 1426-27 (9th Cir. 1991), cert. denied, 502 U.S. 908.

9 Defendant's attorney during the proceedings attests that he
10 reviewed the terms of the plea agreement, and the Sentencing
11 Guidelines calculations with the defendant prior to the entry of
12 the guilty plea. See Declaration of Frank Ragen, attached as
13 Exhibit 4. In the opinion of his attorney, Mr. Caracci appeared
14 to fully comprehend the terms of his plea agreement. In short,
15 there is no evidence in the record to suggest that Mr. Caracci --
16 who, notably, files this petition pro se -- was unable to
17 understand the consequences of his plea.

18 B. DEFENDANT RAISES ISSUES
19 PROPERLY MADE ONLY ON DIRECT APPEAL

20 Defendant's claim that his counsel was incompetent is a
21 thinly-veiled attempt to raise on habeas corpus issues that should
22 have been raised on direct appeal. The Ninth Circuit has held
23 that nonconstitutional sentencing errors are not reviewable by
24 means of a § 2255 habeas petition when those issues were not
25 raised on direct appeal. United States v. Schlesinger, 49 F.3d
26 483 (9th Cir. 1995). Here, petitioner not only waived appeal in
27 his plea agreement, but he also failed to even attempt to file an
28

1 appeal in order to preserve his argument that the waiver was
2 invalid.

3 The arguments raised by defendant in his habeas petition are
4 nonconstitutional sentencing issues. By all objective standards,
5 his counsel was competent and defendant's current arguments are
6 not legally valid. Regardless of the calculations used to arrive
7 at defendant's sentence, the plea agreement clearly sets forth
8 that the Government anticipated recommending a 71-month sentence,
9 and defendant's present claim that he lacked a clear understanding
10 of the proceedings is simply not credible.^{5/}

11 In any event, even if defendant were to prevail on his claim
12 of incompetent counsel, the remedy would not be a "re-sentencing
13 predicated on the legal propositions set forth within the contours
14 of [defendant's] pro se submission" (Petitioner's brief at 9-10).
15 Such a sentence would clearly not be one anticipated by the
16 parties, and the plea agreement would therefore not reflect a
17 meeting of the minds. United States v. Read, 778 F.2d 1437, 1441
18 (9th Cir. 1985), cert. denied, 479 U.S. 835 (1986) (a plea
19 agreement is contractual in nature). Accordingly, the appropriate
20 remedy would be to vacate the guilty plea and proceed to trial.
21 See United States v. Keller, 902 F.2d 1391, 1394 (9th Cir. 1990)
22 (to prevail on incompetency of counsel claims raised in habeas
23
24
25
26

27 ^{5/}The transcript of the sentencing hearing on July 6, 1993 is
28 attached as Exhibit 5.

1 petition, petitioner must show that absent the allegedly erroneous
2 advice of counsel, he would have insisted on going to trial).^{6/}

3 III

4 CONCLUSION

5 For the foregoing reasons, the Government respectfully
6 requests that the motion to vacate the sentence be denied.

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24 ^{6/}The facts of Keller resemble those presented to the court
25 in this case. In Keller, the petitioner raised claims of
26 nonconstitutional sentencing errors and incompetency of counsel.
27 The Ninth Circuit deemed the sentencing issues waived because
28 petitioner neither raised the issue at the time of sentencing or
on direct appeal. 902 F.2d at 1394.

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6 Attorneys for Plaintiff
United States of America
7

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,	)	Criminal Case No. 92-0026-E
	)	Civil Case No. 96-1101-E
11 Plaintiff,)	
12 v.)	
	)	CERTIFICATE OF SERVICE
	)	BY MAIL
13 MICHAEL CLEMENT CARACCI)	
)	
14 Defendant)	

15
16 IT IS HEREBY CERTIFIED that:

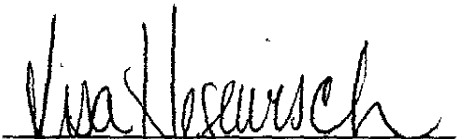
17 I, Lisa Hegewisch, am a citizen of the United States over the
18 age of 18 years and a resident of San Diego County, California; my
19 business address is 880 Front Street, San Diego, California 92101-
20 8893; I am not a party to the above-entitled action; and
21 subsequent to filing with the Clerk of the Court, I will deposit
22 in the United States mail at San Diego, California, in an envelope
23 bearing the requisite postage, a copy of GOVERNMENT'S RESPONSE AND
24 OPPOSITION TO DEFENDANT'S MOTION PURSUANT TO 28 U.S.C. § 2255 TO
25 VACATE SENTENCE AND REMAND FOR RESENTENCING, addressed to:

26 Michael Clement Caracci
8-1 FPC TerreHaute, 02774-424
27 P.O. Box 33
TerreHaute, IN 47808
28

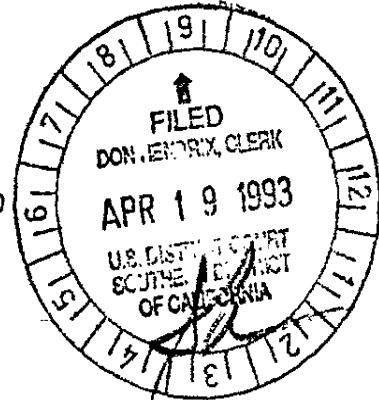
1 the last known address, at which place there is delivery service
2 of mail from the United States Postal Service.

3 I declare under penalty of perjury that the foregoing is true
4 and correct.

5 Executed on the 16th day of September, 1996.

6
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8 
9 Lisa Hegewisch
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28

1 WILLIAM BRANIFF
 2 United States Attorney
 3 CAROL C. LAM/PAUL S. COOK
 4 Assistant U.S. Attorneys
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6 Attorneys for Plaintiff
 7 United States of America

8 UNITED STATES DISTRICT COURT
 9 SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,	)	Criminal Case No. 92-0026-E
)	
11 Plaintiff,)	
	)	<u>PLEA AGREEMENT</u>
12 v.)	
)	
13 MICHAEL CLEMENT CARACCI (4),)	
)	
14 Defendant.)	
)	

16 Pursuant to Federal Rule of Criminal Procedure 11(e)(1)(B),
 17 it is hereby agreed by and between the plaintiff, UNITED STATES OF
 18 AMERICA, by and through its counsel William Braniff, United States
 19 Attorney, and Carol C. Lam and Paul S. Cook, Assistant U.S.
 20 Attorneys, and the Defendant, Michael Clement Caracci, with the
 21 advice and approval of Frank J. Ragen, Esq., counsel for the
 22 Defendant, that the terms of the plea agreement are as follows:

23 1. This Agreement is limited to the United States
 24 Attorney's Office for the Southern District of California and
 25 cannot bind any other federal, state or local prosecuting,
 26 administrative or regulatory authorities.

27 ///

28 CCL:lg: (carcar.agr)
 April 16, 1993

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1 2. The Defendant agrees to plead guilty to Counts 1, 9, 11,
2 13, 14, and 15, which charge him with violations of Title 18,
3 United States Code, Sections 371, 1343, 894, 1962(c), 1963 and 2.
4 Counts 1 and 9 each carry maximum penalties of five (5) years
5 imprisonment, a \$250,000 fine, a period of supervised release of
6 not more than three (3) years and a special assessment of \$50.00.
7 Counts 11, 13, 14, and 15 each carry maximum penalties of twenty
8 (20) years imprisonment, a \$250,000 fine, a period of supervised
9 release of not more than three (3) years, and a special assessment
10 of \$50.00.

11 3. Defendant acknowledges that the elements of the offense
12 of Title 18, U.S.C. Section 371 are:

13 (a) that there was an agreement between two or more
14 persons to commit at least one crime charged in the indictment;

15 (b) The defendant became a member of the conspiracy
16 knowing of at least one of its objects and intending to help
17 accomplish it; and

18 (c) One of the members of the conspiracy performed at
19 least one overt act for the purpose of carrying out the
20 conspiracy.

21 4. Defendant acknowledges that the elements of the offense
22 of Title 18, U.S.C., Section 1343 are:

23 (a) that the Defendant knowingly participated in a
24 scheme and artifice to defraud;

25 (b) that the Defendant did so with the intent to
26 defraud; and
27

28 (c) that in advancing, furthering, or carrying out this
scheme to obtain money or property by means of false or fraudulent

1 pretenses, representations, or promises, the Defendant used wire
2 communications in interstate commerce.

3 5. With respect to Counts 11, 13 and 14, the Defendant
4 acknowledges that the elements of the offense are:

5 (a) that the Defendant knowingly used or participated
6 in the use of extortionate means to collect an extension of
7 credit, and

8 (b) In doing so the Defendant expressly or implicitly
9 threatened the use of violence or criminal means to cause harm to
10 the person, reputation or property of the victim.

11 6. With respect to Count 15 of the Indictment, the Defendant
12 acknowledges that the elements of the offense are:

13 (a) that an enterprise existed;

14 (b) that the enterprise affected interstate or foreign
15 commerce;

16 (c) that the Defendant was associated with or employed
17 by the enterprise;

18 (d) that the Defendant engaged in a pattern of
19 racketeering activity; and

20 (e) that the Defendant conducted or participated in the
21 conduct of the enterprise through that pattern of racketeering
22 activity.

23 7. The parties agree that the Federal Sentencing Guidelines
24 (18 U.S.C. § 3551 et seq.) apply. The parties further acknowledge
25 the following applicable guideline factors:

26 (a) By entering a plea of guilty to the above counts, the
27 Defendant has demonstrated an acceptance of responsibility for
28 this offense and the Government will recommend a two-level

1 reduction in the applicable guideline offense level pursuant to
2 Section 3E1.1(a), provided the Defendant is truthful with
3 Probation and the Court. Defendant reserves the right to argue
4 for a three-level reduction for acceptance of responsibility
5 pursuant to Section 3E1.1(b).

6 (b) The government agrees that the "loss" attributable to
7 Counts 1 and 9, for the purposes of this plea agreement only, is
8 \$500,000.

9 (c) The Government will recommend that Defendant was manager
10 or supervisor warranting an upward role adjustment of three levels
11 (+3) pursuant to § 3B1.1(b). Defendant reserves the right to
12 present arguments that he played a lesser role in the offense and
13 should not receive a three level upward adjustment.

14 (d) The Government and defendant are free to argue for the
15 appropriate Criminal History Category and any departures based on
16 overstatement or inadequacy of the Criminal History Category
17 pursuant to § 4A1.3 but not to exceed Category II (two).

18 8. The Government agrees not to recommend a sentence
19 exceeding 71 months in custody.

20 9. The Government agrees to leave any decisions regarding
21 designation of an institution or self-surrender solely within the
22 discretion of the sentencing judge, following receipt of the
23 presentence report.

24 10. The parties acknowledge that sentencing is a matter
25 solely within the discretion of the Court. The Court is under no
26 obligation to accept the Government's recommendation and may in
27 its discretion impose any sentence it deems appropriate and just,
28 up to the statutory maximum stated herein. The Defendant will not

1 be entitled to withdraw his plea in the event the Court sentences
2 him to more than 71 months in custody.

3 11. The Defendant agrees that he will waive his right to
4 appeal from the sentence imposed by the Court, provided that the
5 custodial sentence does not exceed 71 months.

6 12. In exchange for the Defendant's plea of guilty to the
7 above charges, the Government agrees to dismiss the remaining
8 counts of the Indictment as to this Defendant in the above-
9 captioned case at the time of sentencing.

10 13. The Defendant acknowledges that he has read and
11 understands each of the provisions of this plea agreement. The
12 Defendant has discussed the case and his constitutional and other
13 rights with counsel, and understands that, by entering a plea of
14 guilty, he will be giving up the right: to plead not guilty; to
15 trial by jury; to confront, cross-examine and compel the
16 attendance of witnesses; to present evidence; to remain silent and
17 refuse to be a witness by asserting the privilege against self-
18 incrimination, and to be presumed innocent until proven guilty
19 beyond a reasonable doubt.

20 14. The Defendant's attorney has advised him of the nature
21 of the charges and the nature and range of possible sentences.
22 The Defendant is satisfied that his defense attorney has
23 competently represented him.

24 15. The Defendant is entering this guilty plea freely and
25 voluntarily, and not as the result of force, threats, assurance,
26 or promises other than the promises contained in this Agreement.
27

28 16. In signing this Agreement, the Defendant is not under
the influence of any drug, medication, liquor, intoxicant or

1 depressant, and is fully capable of understanding the terms and
2 conditions of this Agreement.

3 17. All promises and acknowledgements made by each party are
4 solely for the purposes of this Agreement and are entirely
5 dependent upon the full performance of the promises and
6 acknowledgements made by the other party.

7 18. This Agreement constitutes all the terms of the plea
8 agreement between the Government and the Defendant, and the
9 Government has made no other representations to the Defendant or
10 to his attorney. All terms not specifically addressed herein
11 remain open. No additional agreement, understanding or condition
12 may be entered into unless in writing and signed by all parties.

1
2 This Agreement is not contingent in any way upon the outcome
3 of any investigation, proceeding or subsequent trial.

4 DATED: April 19, 1993

5 Respectfully submitted,

6 WILLIAM BRANIFF
7 United States Attorney

8 *Carol C. Lam*

9 CAROL C. LAM
10 Assistant U.S. Attorney

11 *Paul S. Cook*

12 PAUL S. COOK
13 Assistant U.S. Attorney

14 I have read the above plea agreement and discussed its
15 contents with my attorney, Frank J. Ragen. I understand the terms
16 of the plea agreement and agree to them.

17 DATED: April 19, 1993

18 *Michael Clement Caracci*
19 MICHAEL CLEMENT CARACCI
20 Defendant

21 I concur with this plea agreement.

22 DATED: April 19, 1993

23 *Frank J. Ragen*
24 FRANK J. RAGEN
25 Attorney for Defendant
26
27
28

THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
PLAINTIFF,

VERSUS

MICHAEL CLEMENT CARACCI,
DEFENDANT.

NO. 92-0026-E-CRIMINAL
DISPOSITION

SAN DIEGO, CALIFORNIA
APRIL 19, 1993, 9:00 A.M.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE WILLIAM B. ENRIGHT., WITHOUT A JURY

APPEARANCES:

FOR THE GOVERNMENT:

ALAN BERSIN, ESQ., U.S. ATTY.
BY: PAUL COOK, A.U.S.A.
940 FRONT STREET
SAN DIEGO, CALIFORNIA 92189

FOR THE DEFENDANT:

FRANK J. RAGEN, II, ESQ.
108 IVY STREET
SAN DIEGO, CALIFORNIA 92101

OFFICIAL REPORTER:

D. JOAN KING, C.S.R., C.M.
940 FRONT STREET, ROOM 4N16
SAN DIEGO, CALIFORNIA 92189
TELEPHONE: (619) 234-7029

REPORTED BY STENOTYPE
TRANSCRIBED BY COMPUTER

1 SAN DIEGO, CALIFORNIA, MONDAY, APRIL 192, 1993, 9:00 A.M.

2 (PRIOR UNRELATED PROCEEDINGS.)

3 THE CLERK: NUMBER 2-B, 92-0026, UNITED STATES VERSUS
4 MICHAEL CLEMENT CARACCI.

5 MR. RAGEN: FRANK RAGEN ON BEHALF OF MICHAEL CARACCI.
6 HE IS PERSONALLY PRESENT.

7 MR. COOK: PAUL COOK ON BEHALF OF THE UNITED STATES.

8 MR. RAGEN: YOUR HONOR, WE HAVE ENTERED INTO A PLEA
9 AGREEMENT WITH THE UNITED STATES. IT'S IN WRITING. IT HAS
10 BEEN FILED. IT WOULD BE OUR INTENTION TO ENTER A PLEA OF
11 GUILTY TO COUNTS ONE, NINE, ELEVEN, THIRTEEN, FOURTEEN AND
12 FIFTEEN THIS MORNING.

13 ONE, NINE, ELEVEN, THIRTEEN, FOURTEEN AND FIFTEEN.

14 THE COURT: ALL RIGHT.

15 MA'AM, WHEN YOU ARE READY, YOU MAY PROCEED.

16 THE CLERK: MICHAEL CLEMENT CARACCI, IS THAT YOUR TRUE
17 NAME?

18 THE DEFENDANT: YES.

19 THE CLERK: IS IT YOUR INTENTION TO WITHDRAW YOUR
20 PREVIOUSLY ENTERED PLEA OF NOT GUILTY AND ENTER A NEW PLEA OF
21 GUILTY TO COUNTS ONE, NINE, ELEVEN, THIRTEEN, FOURTEEN AND
22 FIFTEEN OF THE ORIGINAL INDICTMENT?

23 THE DEFENDANT: YES.

24 THE CLERK: HOW DO YOU PLEAD TO COUNT ONE OF THE
25 ORIGINAL INDICTMENT?

1 THE DEFENDANT: GUILTY.

2 THE CLERK: COUNT NINE?

3 THE DEFENDANT: GUILTY.

4 THE CLERK: COUNT ELEVEN?

5 THE DEFENDANT: GUILTY.

6 THE CLERK: COUNT THIRTEEN?

7 THE DEFENDANT: GUILTY.

8 THE CLERK: COUNT FOURTEEN?

9 THE DEFENDANT: GUILTY.

10 THE CLERK: AND COUNT FIFTEEN?

11 THE DEFENDANT: GUILTY.

12 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

13 YOU DO SOLEMNLY SWEAR THAT THE EVIDENCE YOU ARE ABOUT

14 TO GIVE IN THE CAUSE NOW BEFORE THE COURT WILL BE THE TRUTH,

15 THE WHOLE TRUTH AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

16 THE DEFENDANT: I DO.

17 THE COURT: ALL RIGHT, THANK YOU.

18 MR. CARACCI, I WOULD LIKE TO ASK YOU A FEW QUESTIONS,

19 SIR, BEFORE WE TAKE YOUR PLEA.

20 HOW OLD ARE YOU, SIR?

21 THE DEFENDANT: FIFTY-FOUR.

22 THE COURT: HOW FAR ALONG HAVE YOU GONE IN SCHOOL,

23 SIR?

24 THE DEFENDANT: G.E.D. FOR HIGH SCHOOL.

25 THE COURT: HAS YOUR ATTORNEY ADVISED YOU AND DO YOU

1 UNDERSTAND THAT YOU HAVE THE FOLLOWING CONSTITUTIONAL RIGHTS:
2 THE RIGHT TO A SPEEDY AND PUBLIC TRIAL; THE RIGHT TO BE TRIED
3 BY A JURY OF TWELVE PEOPLE, OR YOU MAY GIVE UP THAT RIGHT AND
4 HAVE A JUDGE LIKE MYSELF HEAR YOUR CASE SITTING WITHOUT A JURY.

5 YOU HAVE THE PRIVILEGE AGAINST SELF-INCRIMINATION.
6 WHAT THAT MEANS IS THIS: YOU NEED NOT TAKE THE WITNESS STAND
7 AT ANY HEARING OR TRIAL AND THE GOVERNMENT CANNOT COMMENT ON
8 YOUR DECISION. YOU HAVE THE RIGHT TO BE CONFRONTED BY AND
9 CROSS-EXAMINE ALL WITNESSES WHO ACCUSE YOU IN THIS MATTER. YOU
10 HAVE THE RIGHT TO A LAWYER AND THE RIGHT TO HAVE WITNESSES
11 BROUGHT HERE TO TESTIFY FOR YOU.

12 ADDITIONALLY, SIR, YOU HAVE THE RIGHT TO PERSIST IN
13 YOUR PLEA OF NOT GUILTY. I WOULD ADVISE YOU, IF YOU ENTER A
14 PLEA OF GUILTY, THERE WILL BE NO COMMENTS ON THE MERITS OF THE
15 CASE.

16 DO YOU UNDERSTAND THAT YOU HAVE THOSE RIGHTS?

17 THE DEFENDANT: YES, I DO.

18 THE COURT: I WOULD ADVISE YOU THAT YOU ARE
19 CHARGED--MR. COOK, YOU MIGHT BE ABLE TO HELP ME.

20 CAN YOU DELINEATE FOR ME THE CRIMINAL CHARGE IN EACH
21 OF THE NAMED COUNTS?

22 MR. COOK: YES, SIR.

23 COUNT ONE, YOUR HONOR, IS CONSPIRACY, SPECIFIC
24 CONSPIRACY TO COMMIT MAIL AND WIRE FRAUD. COUNT NINE IS A
25 SUBSTANTIVE COUNT OF WIRE FRAUD. COUNT ELEVEN IS EXTORTION.

1 THE VICTIM IN THAT CASE IS JOSEPH PIGNATELLO. COUNT THIRTEEN
2 IS AN EXTORTION CHARGE. THE VICTIM IN THAT CASE IS FRED SARGE
3 FERRIS. COUNT FOURTEEN, EXTORTION CHARGE, THE VICTIM OF THAT
4 IS GEORGE MASON; AND COUNT FIFTEEN IS THE RICO CHARGE,
5 YOUR HONOR.

6 THE COURT: ALL RIGHT.

7 I WOULD ADVISE YOU, MR. CARACCI, THAT YOU ARE CHARGED
8 IN COUNT ONE WITH CONSPIRACY TO COMMIT MAIL AND WIRE FRAUD; IN
9 COUNT NINE, WITH WIRE FRAUD; IN COUNT ELEVEN, THIRTEEN AND
10 FOURTEEN, WITH EXTORTION WITH THREE DIFFERENT VICTIMS IN EACH
11 OF THOSE COUNTS; AND, IN COUNT FIFTEEN, YOU ARE CHARGED WITH A
12 RICO VIOLATION.

13 DO YOU UNDERSTAND THOSE TO BE THE CHARGES, SIR?

14 THE DEFENDANT: YES.

15 THE COURT: I WOULD ADVISE YOU, SIR, THAT COUNTS ONE
16 AND NINE CARRY MAXIMUM PENALTIES OF FIVE YEARS' IMPRISONMENT,
17 TWO-HUNDRED-FIFTY-THOUSAND-DOLLARS' FINE, A PERIOD OF
18 SUPERVISED RELEASE FOR NOT MORE THAN THREE YEARS AND A SPECIAL
19 PENALTY ASSESSMENT OF FIFTY DOLLARS. COUNT ELEVEN, THIRTEEN,
20 FOURTEEN AND FIFTEEN EACH CARRY MAXIMUM PENALTIES OF TWENTY
21 YEARS' IMPRISONMENT, TWO-HUNDRED-FIFTY-THOUSAND-DOLLARS' FINE,
22 A PERIOD OF SUPERVISED RELEASE OR NOT MORE THAN THREE YEARS AND
23 A SPECIAL ASSESSMENT OF FIFTY DOLLARS.

24 BECAUSE THERE ARE MULTIPLE COUNTS, UNDER THE
25 GUIDELINES, THERE MAY BE AN ADDITIONAL TIME FACTOR THAT WOULD

1 BE ENTERED INTO BECAUSE THERE ARE A NUMBER OF FELONIES
2 INVOLVED.

3 YOU HAVE DISCUSSED THAT WITH YOUR LAWYER ALSO, I TAKE
4 IT?

5 THE DEFENDANT: YES, SIR.

6 THE COURT: DO YOU UNDERSTAND THOSE TO BE THE
7 PENALTIES INVOLVED?

8 THE DEFENDANT: YES.

9 THE COURT: I WOULD ADVISE YOU THAT SUPERVISED RELEASE
10 HAS CERTAIN CONDITIONS ATTENDANT TO IT. IF YOU VIOLATE THOSE
11 TERMS, YOU CAN BE IMPRISONED FOR THAT TERM IN ADDITION TO THE
12 CUSTODIAL PORTION I MENTIONED.

13 DO YOU UNDERSTAND THAT?

14 THE DEFENDANT: YES.

15 THE COURT: YOU HAVE HAD AN OPPORTUNITY TO READ OVER
16 THE ELEMENTS WITH YOUR LAWYER AND DISCUSS IT WITH HIM BEFORE
17 YOU SIGNED IT; IS THAT CORRECT?

18 THE DEFENDANT: YES, I DID.

19 THE COURT: HAVING THOSE PENALTIES IN MIND, SIR, IS IT
20 YOUR DESIRE TO WAIVE OR TO GIVE UP THOSE RIGHTS THAT I HAVE
21 JUST TOLD YOU ABOUT AND YOU HAVE TOLD ME THAT YOU UNDERSTAND
22 AND ENTER A PLEA OF GUILTY TO EACH OF THESE COUNTS?

23 IS THAT WHAT YOU WISH TO DO, SIR?

24 THE DEFENDANT: THAT IS CORRECT.

25 THE COURT: HAVE YOU HAD ANY DRUGS OR MEDICATION IN

1 THE LAST THREE DAYS?

2 THE DEFENDANT: JUST NORMAL, ASPIRIN.

3 THE COURT: YOU FEEL IN FULL POSSESSION OF YOUR
4 FACULTIES NOW?

5 THE DEFENDANT: YES.

6 THE COURT: HAVE YOU TOLD YOUR LAWYER ALL THE FACTS
7 AND CIRCUMSTANCES ABOUT THIS CASE?

8 THE DEFENDANT: I HAVE.

9 THE COURT: YOU HAVE A CLEAR UNDERSTANDING OF BOTH THE
10 CHARGES AGAINST YOU AND THE CONSEQUENCES OF YOUR PLEA?

11 THE DEFENDANT: I HAVE.

12 THE COURT: HAS ANYONE THREATENED YOU TO GET YOU TO
13 ENTER THE PLEA?

14 THE DEFENDANT: NO.

15 THE COURT: HAS ANYONE MADE YOU ANY PROMISES OF ANY
16 REWARD OR PROBATION TO GET YOU TO ENTER THE PLEA?

17 THE DEFENDANT: NO.

18 THE COURT: IF YOUR ATTORNEY HAS HAD ANY DISCUSSIONS
19 WITH THE GOVERNMENT, AM I CORRECT THAT THOSE DISCUSSIONS
20 THEMSELVES ARE NOT THE REASON FOR YOUR ENTERING THE PLEA OF
21 GUILTY? IS THAT TRUE?

22 THE DEFENDANT: THAT IS CORRECT.

23 THE COURT: ARE YOU ENTERING THIS PLEA OF GUILTY
24 BECAUSE, IN TRUTH AND IN FACT, YOU ARE GUILTY?

25 THE DEFENDANT: YES.

1 THE COURT: HAVE ANY OF THE DEFENDANT'S CONSTITUTIONAL
2 RIGHTS BEEN VIOLATED IN YOUR JUDGMENT, MR. RAGEN?

3 MR. RAGEN: NOT TO MY KNOWLEDGE.

4 THE COURT: DOES HE POSSESS A MERITORIOUS DEFENSE TO
5 THE ACTION?

6 MR. RAGEN: NOT IN MY JUDGMENT.

7 THE COURT: AM I CORRECT THAT THE PLEA AGREEMENT IS
8 CONTAINED, IN ITS ENTIRETY, IN THE PLEA AGREEMENT WHICH HAS
9 BEEN HANDED TO ME THIS MORNING CONTAINING YOUR SIGNATURE?

10 MR. RAGEN: YES, YOUR HONOR.

11 THE COURT: I WOULD ASK YOU, MR. CARACCI, HAVE YOU HAD
12 AN OPPORTUNITY TO READ AND DISCUSS THE PLEA AGREEMENT BEFORE
13 YOU SIGNED IT WITH YOUR LAWYER?

14 THE DEFENDANT: YES.

15 THE COURT: DOES IT CONTAIN ANY UNDERSTANDING YOU
16 MIGHT HAVE WITH THE GOVERNMENT AS TO THEIR UNDERSTANDING IN
17 THIS MATTER? DOES IT CONTAIN ALL THE UNDERSTANDING THAT YOU
18 HAVE THAT THE GOVERNMENT'S POSITION WILL BE AS WRITTEN DOWN IN
19 THIS PLEA AGREEMENT; IS THAT RIGHT?

20 THE DEFENDANT: YES.

21 THE COURT: THE PLEA AGREEMENT MAY BE FILED.

22 DO YOU UNDERSTAND THAT THE SENTENCE IN THIS CASE MAY
23 BE DETERMINED BY THE SENTENCING REFORM ACT OF 1984 WITH THE
24 SO-CALLED "SENTENCING GUIDELINES."

25 DO YOU UNDERSTAND THAT?

1 THE DEFENDANT: I UNDERSTAND THAT.

2 THE COURT: HAVE YOU HAD AN OPPORTUNITY TO DISCUSS
3 WITH YOUR LAWYER THE SENTENCING GUIDELINES AS TO HOW THEY WILL
4 APPLY TO YOU?

5 THE DEFENDANT: I HAVE.

6 THE COURT: DO YOU UNDERSTAND THAT THE COURT WILL NOT
7 BE ABLE TO DETERMINE WHAT THE GUIDELINE WILL BE UNTIL AFTER A
8 PRESENTENCE REPORT HAS BEEN PREPARED AND BOTH YOU AND THE
9 GOVERNMENT HAVE AN OPPORTUNITY TO OBJECT TO IT?

10 DO YOU UNDERSTAND THAT?

11 THE DEFENDANT: I UNDERSTAND THAT.

12 THE COURT: DO YOU UNDERSTAND THAT, AFTER IT HAS BEEN
13 DETERMINED WHAT GUIDELINE IS APPLICABLE IN YOUR CASE, THE JUDGE
14 HAS THE AUTHORITY, IN SOME CIRCUMSTANCES, TO IMPOSE A GREATER
15 OR LESSER SENTENCE THAN THAT CALLED FOR?

16 DO YOU UNDERSTAND THAT?

17 THE DEFENDANT: YES, SIR.

18 THE COURT: DO YOU UNDERSTAND THAT BOTH YOU AND THE
19 GOVERNMENT HAVE A RIGHT TO APPEAL ANY SENTENCE I DO IMPOSE?
20 YOU DO UNDERSTAND THAT?

21 THE DEFENDANT: I UNDERSTAND THAT.

22 THE COURT: ALL RIGHT.

23 DO YOU UNDERSTAND ALSO, SIR, THAT PAROLE HAS BEEN
24 ABOLISHED; AND, IF YOU ARE SENTENCED TO PRISON, YOU WILL NOT BE
25 RELEASED ON PAROLE? DO YOU UNDERSTAND THAT?

1 THE DEFENDANT: YES.

2 THE COURT: DO YOU UNDERSTAND, IF THE SENTENCE IS MORE
3 SEVERE THAN YOU EXPECTED, YOU WILL STILL BE BOUND BY YOUR PLEA
4 AND HAVE NO RIGHT TO WITHDRAW IT?

5 DO YOU UNDERSTAND THAT?

6 THE DEFENDANT: I UNDERSTAND.

7 THE COURT: I WOULD ADVISE YOU: YOU ARE UNDER OATH,
8 AND I AM AT LIBERTY TO ASK YOU QUESTIONS ABOUT THE OFFENSE. IF
9 YOU GIVE FALSE ANSWERS, YOU SUBJECT YOURSELF TO PENALTIES FOR
10 PERJURY; BUT, IN ANY EVENT, YOU WILL BE SUBJECT TO THE
11 PENALTIES OF PERJURY.

12 THE DEFENDANT: I UNDERSTAND.

13 MR. RAGEN: THANK YOU, YOUR HONOR. I WOULD LIKE TO
14 LAY THE FACTUAL FOUNDATION.

15 AS TO COUNT ONE, MR. CARACCI, BEFORE AUGUST OF 1989,
16 IN THE SOUTHERN DISTRICT OF CALIFORNIA, ENTERED INTO AN
17 AGREEMENT WITH CHRIS PETTI TO DEFRAUD THE RINCON INDIAN
18 RESERVATION AND THE BUREAU OF PRISONS BY NOT DISCLOSING HIS
19 INVOLVEMENT IN THE ATTEMPT TO SECURE THE CONTRACT TO OPERATE
20 THE BINGO ON THE RESERVATION. IN FURTHERANCE OF THIS ILLEGAL
21 AGREEMENT, HE DISCUSSED THIS AGREEMENT WITH MR. PETTI BY
22 TELEPHONE WHILE HE WAS IN ILLINOIS AND MR. PETTI WAS HERE IN
23 SAN DIEGO.

24 THE COURT: ALL RIGHT.

25 IS THERE A SUFFICIENT FACTUAL FOUNDATION AS TO COUNT

1 ONE, MR. COOK?

2 MR. COOK: YES, YOUR HONOR.

3 THE DEFENDANT: IS WHAT YOUR LAWYER SAID TRUE IN ALL
4 RESPECTS, MR. CARACCI?

5 THE DEFENDANT: THAT IS TRUE.

6 THE COURT: YOU MAY CONTINUE, MR. RAGEN.

7 MR. RAGEN: AS TO COUNT NINE, MR. CARACCI, ON DECEMBER
8 22, 1987, HAD A TELEPHONE CONVERSATION, WHILE HE WAS IN
9 ILLINOIS AND CHRIS PETTI WAS IN SAN DIEGO, IN AN EFFORT TO
10 ACCOMPLISH THE GOALS OF THE ILLEGAL AGREEMENT PREVIOUSLY
11 DESCRIBED IN MY DESCRIPTION OF COUNT ONE; THAT IS, TO SECURE
12 THE BINGO CONCESSION FROM THE RINCON INDIAN RESERVATION WITHOUT
13 FULL DISCLOSURE OF ALL THE REQUIRED INFORMATION.

14 THE COURT: IS THERE A SUFFICIENT FACTUAL FOUNDATION,
15 IN YOUR OPINION, MR. COOK?

16 MR. COOK: MAY I HAVE A MOMENT WITH MR. RAGEN,
17 YOUR HONOR?

18 THE COURT: ALL RIGHT.

19 (PAUSE.)

20 MR. RAGEN: YOUR HONOR, WE ADD TO THAT FACTUAL BASIS
21 THAT THE CONVERSATION CONSISTED OF NOT DISCLOSING THE FULL
22 INVOLVEMENT OF ALL THE PARTIES.

23 THE COURT: IS WHAT YOUR LAWYER SAID TRUE IN ALL
24 RESPECTS, MR. CARACCI?

25 THE DEFENDANT: THAT'S CORRECT.

1 THE COURT: ALL RIGHT.

2 AS TO COUNTS ELEVEN, THIRTEEN AND FOURTEEN, SIR.

3 MR. RAGEN: AS TO COUNT ELEVEN, BETWEEN MARCH, 1988,
4 AND APRIL OF 1989, MICHAEL CARACCI PARTICIPATED WITH CHRIS
5 PETTI IN THE USE OF EXTORTIONATE MEANS TO COLLECT AND ATTEMPT
6 TO COLLECT AN EXTENSION OF CREDIT FROM JOSEPH PIGNATELLO BY
7 EXPRESSLY AND IMPLICITLY THREATENING TO USE VIOLENCE AND OTHER
8 CRIMINAL MEANS TO CAUSE HARM TO THE PERSON, REPUTATION AND
9 PROPERTY OF JOSEPH PIGNATELLO.

10 THE COURT: WOULD THAT ALSO BE TRUE AS TO THIRTEEN AND
11 FOURTEEN WITH DIFFERENT INDIVIDUALS NAMED, MR. FERRIS AND--

12 MR. RAGEN: YES, YOUR HONOR. AS TO THIRTEEN, IT WOULD
13 BE FRED FERRIS, AND AS TO COUNT FOURTEEN IT WOULD BE
14 GEORGE MACEY.

15 THE COURT: ALL RIGHT.

16 IS THERE A SUFFICIENT FACTUAL FOUNDATION AS TO THOSE
17 THREE COUNTS, MR. COOK, IN YOUR JUDGMENT?

18 MR. COOK: CAN I HAVE A MOMENT WITH MR. RAGEN AGAIN,
19 YOUR HONOR?

20 THE COURT: SURE.

21 (PAUSE.)

22 MR. RAGEN: YOUR HONOR, AS TO EACH OF THOSE COUNTS,
23 MR. CARACCI HAD TELEPHONE CONVERSATIONS, WHILE HE WAS IN
24 ILLINOIS AND MR. PETTI WAS HERE IN SAN DIEGO, REGARDING EACH OF
25 THOSE CRIMES.

1 THE COURT: I SEE.

2 IS WHAT YOUR LAWYER SAID IN EACH OF THOSE CASES? IS
3 THAT TRUE AND CORRECT IN ALL RESPECTS, MR. CARACCI?

4 THE DEFENDANT: YES.

5 THE COURT: AS TO COUNT FIFTEEN, MR. RAGEN?

6 MR. RAGEN: IN THE SOUTHERN DISTRICT OF CALIFORNIA,
7 MICHAEL CARACCI, CHRIS PETTI, GLENN CALAC, CARMEN DINUNZIO AND
8 ANTHONY DINUNZIO WERE ASSOCIATED TOGETHER, AS AN ASSOCIATION,
9 ALSO CALLED AN "ENTERPRISE." THIS GROUP ATTEMPTED TO DEVISE A
10 SCHEME TO DEFRAUD THE RINCON INDIANS AND THE BUREAU OF INDIAN
11 AFFAIRS, AS SET FORTH IN COUNT ONE AND AS STATED FOR COUNT ONE.

12 DURING THE COURSE OF THIS SCHEME, MICHAEL CARACCI HAD
13 TELEPHONE CONVERSATIONS WITH CHRIS PETTI WHILE PETTI WAS IN SAN
14 DIEGO AND CARACCI WAS IN ILLINOIS. FURTHER, THIS ASSOCIATION
15 ATTEMPTED TO COLLECT A DEBT FROM JOSEPH PIGNATELLO, FRED FERRIS
16 AND GEORGE MACEY BY EXTORTIONATE MEANS, BY EXPRESSLY AND
17 IMPLICITLY THREATENING HARM TO PERSON, REPUTATION AND PROPERTY
18 OF EACH OF THOSE INDIVIDUALS.

19 THE COURT: IS THERE A SUFFICIENT FACTUAL FOUNDATION
20 AS TO COUNT FIFTEEN, MR. COOK?

21 MR. COOK: AGAIN, YOUR HONOR, IF I MAY HAVE A MOMENT
22 WITH MR. RAGEN?

23 THE COURT: ALL RIGHT.

24 (PAUSE.)

25 MR. RAGEN: YOUR HONOR, THIS ASSOCIATION JOINED

1 TOGETHER FOR THE CRIMINAL PURPOSES JUST DESCRIBED.

2 THE COURT: I SEE.

3 IS WHAT YOUR LAWYER SAID TRUE IN ALL RESPECTS,

4 MR. CARACCI?

5 THE DEFENDANT: THAT IS CORRECT.

6 THE COURT: IS THIS PLEA FREELY AND VOLUNTARILY MADE,

7 MR. RAGEN?

8 MR. RAGEN: YES.

9 THE COURT: HAVING IN MIND ALL THAT WE HAVE DISCUSSED,
10 THE NATURE OF THE CHARGES AGAINST YOU, AND THE SENTENCES THAT
11 WOULD BE INVOLVED, IS IT STILL YOUR DESIRE TO ENTER SUCH A PLEA
12 OF GUILTY TO THESE CHARGES TODAY, SIR?

13 THE DEFENDANT: YES.

14 THE COURT: DO YOU HAVE ANY QUESTIONS?

15 THE DEFENDANT: NO.

16 THE COURT: THE COURT WOULD FIND, BASED ON THE
17 Demeanor AND PHYSICAL CONDITION OF THE DEFENDANT, THAT HIS PLEA
18 OF GUILTY IS MADE FREELY AND VOLUNTARILY WITH A FULL
19 UNDERSTANDING OF THE NATURE OF THE CHARGES AGAINST HIM AND THE
20 CONSEQUENCES OF THE PLEA. THE COURT WILL, THEREFORE, ACCEPT
21 THE DEFENDANT'S PLEA OF GUILTY.

22 MADAM, YOU MAY REARRAIGN THE DEFENDANT.

23 THE CLERK: NOW THAT YOU HAVE BEEN ADVISED OF THE
24 RIGHTS AND CHARGES AGAINST YOU AND THE POSSIBLE SENTENCE, HOW
25 DO YOU PLEAD TO COUNTS ONE, NINE, ELEVEN, THIRTEEN, FOURTEEN

1 AND FIFTEEN? ARE YOU GUILTY OR NOT GUILTY?

2 THE DEFENDANT: GUILTY.

3 THE COURT: DO YOU MAKE APPLICATION FOR A PRESENTENCE
4 REPORT, MR. RAGEN?

5 MR. RAGEN: YES, YOUR HONOR.

6 THE CLERK: THAT WOULD BE SET ON TUESDAY, JULY 26, AT
7 NINE.

8 THE COURT: IS THAT A CONVENIENT DATE, MR. RAGEN?

9 MR. RAGEN: YES, YOUR HONOR.

10 THE COURT: AND FOR THE GOVERNMENT?

11 MR. COOK: YES, YOUR HONOR.

12 THE COURT: ALL RIGHT.

13 THEN, MR. CARACCI, IF YOU WOULD RETURN ON JULY 6,
14 THEN, AT NINE O'CLOCK, IN THIS COURT, WE WILL PRONOUNCE
15 SENTENCE IN THIS CASE.

16 AND I WOULD APPRECIATE, MR. RAGEN, IF YOU WOULD BE
17 KIND ENOUGH TO TAKE YOUR CLIENT TO PROBATION SO THEY CAN SET UP
18 AN INTERVIEW SCHEDULE.

19 MR. RAGEN: I WILL BE HAPPY TO DO THAT, YOUR HONOR.

20 ONE OF THE CONDITIONS OF HIS BOND HAS BEEN THAT HE HAS
21 NOT BEEN ABLE TO USE THE TELEPHONE EXCEPT TO TALK TO ME. WE
22 WONDER IF THAT CONDITION WOULD BE--

23 THE COURT: YOU DON'T HAVE ANY OBJECTION TO THAT, DO
24 YOU?

25 MR. COOK: NO, YOUR HONOR.

1 THE COURT: THAT CONDITION RELATIVE TO THE LIMITATION
2 ON TELEPHONE CONVERSATIONS MAY BE LIFTED AND VOIDED.

3 I ASSUME YOU WITHDRAW ALL PENDING MOTIONS?

4 MR. RAGEN: YES, YOUR HONOR.

5 THE COURT: AND THE TRIAL DATE VACATED AS TO YOUR
6 CLIENT?

7 MR. RAGEN: THANK YOU, YOUR HONOR.

8 THE COURT: ALL RIGHT, MA'AM, YOU MAY CONTINUE THE
9 CALL OF THE CALENDAR.

10 (OTHER UNRELATED PROCEEDINGS.)

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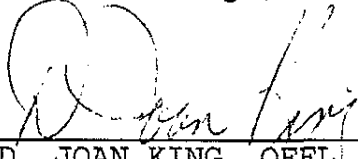
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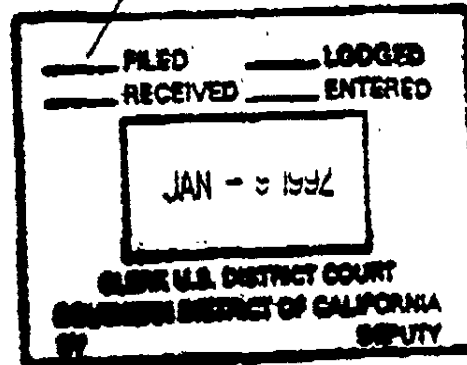
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C E R T I F I C A T I O N

I hereby certify that I am a duly appointed, qualified and acting official Court Reporter for the United States District Court; that the foregoing is a true and correct transcript of the proceedings had in the aforementioned cause on April 19, 1993; that said transcript is a true and correct transcription of my stenographic notes; and that the format used herein complies with the rules and requirements of the United States Judicial Conference.

DATED: March 27, 1996, at San Diego, California.


D. JOAN KING, OFFL. RPTR.
CSR NO. 2335



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

November 1990 Grand Jury

'920026 E

UNITED STATES OF AMERICA,

Plaintiff,

v.

SAMUEL ANTHONY CARLISI (1),
JOHN DIFRONZO (2),
DONALD JOHN ANGELINI (3),
MICHAEL CLEMENT CARACCI (4),
CHRIS PETTI (5),
aka Chris George Poulos,
JOHN PAUL SPILOTRO (6),
CARMEN SALVATORE DINUNZIO (7),
ANTHONY LOUIS DINUNZIO (8),
NICHOLAS DE PENTO (9),
GLEN MARTIN CALAC (10),

Defendants.

Criminal Case No. _____

I N D I C T M E N T

Title 18, U.S.C., Secs. 1962(c) and 1963 - Racketeer Influenced and Corrupt Organization (RICO); Title 18, U.S.C., Sec. 1341 - Mail Fraud; Title 18, U.S.C., Sec. 1343 - Wire Fraud; Title 18, U.S.C., Sec. 894 - Extortion; Title 18, U.S.C., Sec. 1952 - Interstate Travel in Aid of Racketeering; Title 18, U.S.C., Sec. 371 - Conspiracy; Title 18, U.S.C., Sec. 2 - Aiding and Abetting

The grand jury charges:

INTRODUCTORY ALLEGATIONS

At all times material herein unless otherwise noted:

1. Defendants SAMUEL ANTHONY CARLISI, JOHN DIFRONZO, DONALD JOHN ANGELINI, MICHAEL CLEMENT CARACCI, CHRIS PETTI, aka Chris George Poulos, JOHN PAUL SPILOTRO, CARMEN SALVATORE DINUNZIO,
CCL:lg:lb:San Diego
01/09/92

ER 006

1
2 ANTHONY LOUIS DINUNZIO, NICHOLAS DE PENTO, and GLEN MARTIN CALAC
3 were members of, or otherwise affiliated with, the Chicago
4 organized crime family.

5 2. The Chicago organized crime family was known as and
6 referred to variously as La Cosa Nostra, the LCN, "the Outfit,"
7 "organized crime," "O.C.," "Chicago," and "back east."

8 3. The Chicago organized crime family was structured in a
9 hierarchy controlled by a boss. The family had as its second in
10 command an underboss; mid-level leaders known as crew chiefs,
11 "capos," or "captains"; and crews consisting in part of formally
12 inducted members known as "made" men or "soldiers." Persons
13 assisting in furthering the affairs of the family but not formally
14 inducted as members of the family were known as "associates."

15 4. Defendant SAMUEL ANTHONY CARLISTI was the crew chief of
16 the West Side crew of the organized crime family; defendant JOHN
17 DIFRONZO was the crew chief of the Elmwood Park crew; defendant
18 DONALD JOHN ANGELINI was a soldier and gambling overseer; defendant
19 MICHAEL CLEMENT CARACCI was a soldier in John DiFronzo's crew;
20 defendants JOHN PAUL SPILOTRO, NICHOLAS DE PENTO, GLEN MARTIN
21 CALAC, and defendants CHRIS PETTI, aka Chris George Poulos, CARMEN
22 SALVATORE DINUNZIO, and ANTHONY LOUIS DINUNZIO, were associates.

23 5. Beginning in early 1987, due to the imprisonment of
24 Chicago organized crime boss Joseph Aiuppa and underboss Jack
25 Cerone, and the deteriorating health of the "heir-apparent" boss
26 Joseph Ferriola, defendant SAMUEL ANTHONY CARLISTI became the acting
27 boss, and defendant JOHN DIFRONZO became the acting underboss of
28 the Chicago organized crime family.

1
2 6. The Chicago organized crime family obtained income through
3 the pursuit of a variety of illegal activities, including but not
4 limited to bookmaking, loansharking, extortion, illegal gambling,
5 trafficking in stolen property, and fraud, and would travel in
6 interstate commerce in furtherance of those activities.

7 7. Beginning in about April of 1986, the Bureau of Indian
8 Affairs required that all contracts between any person and an
9 Indian tribe must disclose the names, residences and occupations of
10 all parties in interest.

11 8. The Rincon Indian Reservation is located in San Diego
12 County, California, and the Tribal Council of the Rincon Band of
13 Mission Indians had the authority to award contracts to parties,
14 subject to the approval of the Bureau of Indian Affairs, to operate
15 the reservation gambling activities.

16 9. Richard Sola was the tribal attorney and Rick Mazzetti was
17 the tribal administrator for the Rincon Band of Mission Indians.

18 Count 1

19 The Introductory Allegations to this indictment are hereby
20 incorporated by reference as if set forth in full herein.

21 Beginning at a time unknown to the grand jury but at least as
22 early as July, 1985, and continuing thereafter up to and including
23 April 7, 1989, defendants SAMUEL ANTHONY CARLISI, JOHN DIFRONZO,
24 DONALD JOHN ANGELINI, MICHAEL CLEMENT CARACCI, CHRIS PETTI, aka
25 Chris George Poulos, JOHN PAUL SPILOTRO, CARMEN SALVATORE DINUNZIO,
26 ANTHONY LOUIS DINUNZIO, NICHOLAS DE PENTO, GLEN MARTIN CALAC and
27 others known and unknown to the grand jury, did unlawfully
28 willfully and knowingly conspire, confederate, and agree together

1
2 and with each other and with divers other persons known and unknown
3 to the grand jury, to commit offenses against the United States, to
4 wit:

5 a. Mail Fraud, in violation of Title 18, United States
6 Code, Section 1341, as more particularly described in Counts 3
7 through 8 of this indictment, which are hereby incorporated as if
8 set forth in full herein.

9 b. Wire Fraud, in violation of Title 18, United States
10 Code, Section 1343, as more particularly described in Counts 9 and
11 10 of this Indictment, which are hereby incorporated as if set
12 forth in full herein.

13 c. Interstate Travel in Aid of Racketeering, in
14 violation of Title 18, United States Code, Section 1952, as more
15 particularly described in Racketeering Act 2(b) of this Indictment,
16 which is hereby incorporated as if set forth in full herein.

17 METHOD AND MEANS OF THE CONSPIRACY

18 It was a part of the conspiracy that the defendants would and
19 did agree among themselves and with others to obtain a contract
20 with the Rincon Band of Mission Indians [hereafter "Rincon
21 Indians"] to operate gambling activities on the Rincon Indian
22 Reservation in San Diego County.

23 It was a further part of the conspiracy that the defendants
24 would not disclose to the Rincon Tribal Council [hereafter "Tribal
25 Council"] or the Bureau of Indian Affairs [hereafter "BIA"] that
26 the money invested in the gambling operations was derived from
27 organized criminal activity conducted by the Chicago organized
28 crime family.

1
2 It was a further part of the conspiracy that defendant GLEN
3 MARTIN CALAC would use his position as a tribe member in the Rincon
4 Indians to obtain information regarding other proposals for the
5 Rincon gaming operations to give defendants a competitive edge in
6 obtaining a contract.

7 It was a further part of the conspiracy that the defendants
8 would use Sam Kaplan, a Los Angeles businessman, as a "front" in
9 submitting a proposal to obtain the gambling contract [hereinafter
10 "the Kaplan proposal"] and to mask the Chicago organized crime
11 family's hidden ownership of the Rincon gaming operations.

12 It was a further part of the conspiracy that defendant GLEN
13 MARTIN CALAC would represent to the Tribal Council that he would
14 run a management company to operate the gaming operations on behalf
15 of a group of Palm Springs investors.

16 It was a further part of the conspiracy that defendants would
17 attempt to structure their proposal for operation of the games to
18 the Tribal Council in such a way as to maximize the profits for
19 defendants.

20 It was a further part of the conspiracy that the defendants
21 would skim profits from the operation of the games on the Rincon
22 Indian Reservation without the knowledge of the Tribal Council or
23 the Rincon Indians.

24 It was a further part of the conspiracy that the defendants
25 would use the gambling operations on the Rincon Indian Reservation
26 to launder the proceeds of other illegal activities of the Chicago
27 organized crime family.
28

1
2 It was a further part of the conspiracy that defendant
3 NICHOLAS DE PENTO would serve as the local San Diego, California
4 lawyer for the defendants to negotiate and submit proposals to the
5 Tribal Council for operation of the gambling operations.

6 It was a further part of the conspiracy that defendants,
7 having devised a scheme and artifice to defraud, and to obtain
8 money and property by means of false and fraudulent pretenses,
9 representations and promises, for the purpose of executing such
10 scheme and artifice and attempting to do so, would knowingly cause
11 to be delivered by mail according to the direction thereon, certain
12 items of mail matter.

13 It was a further part of the conspiracy that defendants,
14 having devised a scheme and artifice to defraud, and to obtain
15 money or property by means of false and fraudulent pretenses,
16 representations and promises, transmitted and caused to be
17 transmitted in interstate commerce certain telephone
18 communications, for the purpose of executing such scheme and
19 artifice.

20 It was a further part of the conspiracy that defendant MICHAEL
21 CLEMENT CARACCI, acting on behalf of defendants SAMUEL ANTHONY
22 CARLISI and JOHN DIFRONZO in Chicago, would direct defendants CHRIS
23 PETTI, aka Chris George Poulos, JOHN PAUL SPILOTRO, CARME
24 SALVATORE DINUNZIO, and ANTHONY LOUIS DINUNZIO to extort payments
25 from certain individuals the defendants claimed owed money to the
26 late Tony Spilotro, a crew chief in the Chicago family of organized
27 crime, who had been based in Las Vegas, Nevada.

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2 It was a further part of the conspiracy that defendants CARMEN
3 SALVATORE DINUNZIO and ANTHONY LOUIS DINUNZIO would travel from
4 California to Nevada and back to California for the purpose of
5 extorting payments from Joseph Dan Pignatello on behalf of Chicago
6 organized crime crew chief Tony Spilotro.

7 OVERT ACTS

8 The following overt acts occurred within the Southern District
9 of California unless otherwise noted:

- 10 1. In or about July of 1985, in Melrose Park, Illinois,
11 defendants JOHN DIFRONZO, SAMUEL ANTHONY CARLISI, and
12 DONALD JOHN ANGELINI met with others at Rocky's
13 Restaurant and discussed the possibility of financing the
14 gaming operations on the Rincon Indian Reservation in San
15 Diego, California.
- 16 2. On or about March 1, 1987, in San Diego, California,
17 defendant NICHOLAS DE PENTO telephoned the attorney for
18 the Rincon Tribal Council and advised that he, defendant
19 NICHOLAS DE PENTO, was representing some individuals who
20 wanted to immediately open the Rincon gaming operation.
- 21 3. On or about March 1, 1987, in San Diego, California,
22 defendant NICHOLAS DE PENTO sent a letter to the Rincon
23 Tribal Business Council on behalf of an unnamed "client"
24 who wished to assume bingo and card management on the
25 reservation.
- 26 4. On or about March 21, 1987, defendants DONALD JOHN
27 ANGELINI, MICHAEL CLEMENT CARACCI and CHRIS PETTI, aka
28 Chris George Poulos, met with defendant GLEN MARTIN CALAC

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2 in Escondido, California and discussed the Rincon gaming
3 contract.

4 5. On or about April 24, 1987, defendants PETTI, ANGELINI,
5 and CARACCI visited the Rincon Casino building located on
6 the Rincon Indian Reservation in San Diego County,
7 California.

8 6. On or about April 24, 1987, defendants PETTI, ANGELINI,
9 CARACCI, CALAC, and DE PENTO had a meeting at the Plaza
10 International Hotel in San Diego, California, at which
11 they discussed the proposal they would make to the Tribal
12 Council for obtaining the contract to operate the Rincon
13 games.

14 7. On or about April 27, 1987, in San Diego, California,
15 defendant DE PENTO sent a letter on behalf of his
16 "clients," whom he identified only as "a group of
17 investors," to the attorney for the Rincon Tribal
18 Council, outlining a proposal for obtaining the Rincon
19 gaming contract.

20 8. On or about October 4, 1987, in San Diego, California,
21 defendant CALAC informed defendant PETTI in a telephone
22 conversation that he had spoken to people on the
23 reservation about the gaming contract and concluded, "
24 know damn well they'll pick your guys."

25 9. On or about October 21, 1987, defendant PETTI in Sa
26 Diego and defendant CARACCI in Chicago discussed the
27 gaming contract in a telephone conversation in which
28 defendant CARACCI said, "I just want to make sure we ge

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2 it, if anybody's gonna get it . . . I want to get
3 first."

4 10. On or about November 11, 1987, in San Diego, California:
5 defendant PETTI told defendant CALAC by telephone that
6 and Sam Kaplan had met in Los Angeles with "those gu
7 from Chicago," and that Kaplan had said he'd "go alc
8 with it."

9 11. On or about November 11, 1987, defendant PETTI in S
10 Diego and defendant CARACCI in Chicago had a telepho
11 conversation in which they discussed the Rincon gami
12 proposal and in which defendant CARACCI said, "the gu
13 here, you know what I mean, the main guys, they'
14 telling me, what the f--- you know, let's go."

15 12. On or about November 23, 1987, in San Diego, California:
16 defendant DE PENTO sent a letter to the Rincon Triba
17 Council identifying Sam Kaplan as the principal invest
18 behind the gaming proposal.

19 13. On or about December 4, 1987, in San Diego, California:
20 defendant CALAC told defendant PETTI by telephone tha
21 the Tribal Council was also looking at proposals othe
22 than the Kaplan proposal, and that it was important tha
23 defendant DE PENTO appear before the Tribal Council o
24 December 9, 1987.

25 14. On or about December 5, 1987, in San Diego, California:
26 defendant CALAC told defendant PETTI by telephone tha
27 the Tribal Council was considering four proposals i
28 addition to the one submitted by "your guys," and sai

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2 that he had arranged to deliver copies of the competing
3 proposals to defendant DE PENTO "so your guys could have
4 them Tuesday, to give you an idea what they're looking
5 at."

6 15. On or about December 9, 1987, in San Diego, California,
7 defendant DE PENTO asked attorney Barry Shear to appear
8 before the Rincon Tribal Council to present the Kaplan
9 proposal and submit a \$1,000 application fee to the
10 Tribal Council in the form of a check drawn on the
11 account of Law Offices of Nicholas De Pento.

12 16. On or about December 11, 1987, defendant PETTI in San
13 Diego told defendant CARACCI in Chicago by telephone that
14 defendant DE PENTO thought things looked "real good" for
15 them to get the gaming contract.

16 17. On or about December 11, 1987, in San Diego, California,
17 defendant DE PENTO sent a financial statement regarding
18 Sam Kaplan to the Tribal Council, as well as a letter in
19 which defendant DE PENTO referred to Kaplan's "legitimate
20 involvement" in the proposal.

21 18. On or about December 13, 1987, in San Diego, California,
22 defendant CALAC assured defendant PETTI in a telephone
23 conversation that two new members on the Tribal Council
24 would vote for the Kaplan proposal, "so your guys are
25 gonna get it."

26 19. On or about December 17, 1987, defendant CARACCI in
27 Chicago told defendant PETTI in San Diego by telephone
28 that there was going to be a meeting on Sunday in Chicago

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2 with the "other guy," who would have the final say about
3 investing in the Rincon gaming operation.

4 20. On or about December 18, 1987, in San Diego, California,
5 defendant DE PENTO sent a letter to the Rincon Tribal
6 Council modifying the original proposal and stating that
7 defendant GLEN CALAC was "not involved in Mr. Kaplan's
8 proposal to the band."

9 21. On or about December 20, 1987, at approximately
10 9:30 a.m., in Addison, Illinois, defendants ANGELINI,
11 CARACCI, DIFRONZO and CARLISI met at a McDonald's
12 restaurant for approximately one hour.

13 22. On or about December 22, 1987, defendant CARACCI in
14 Chicago told defendant PETTI in San Diego by telephone
15 that "they want to go with that thing, you know; there's
16 going to be like five hundred appropriated," to which
17 defendant PETTI responded, "the only thing that will f---
18 it up is an O.C. label," and defendant CARACCI agreed,
19 "that's why they want you out of there."

20 23. On or about December 28, 1987, in San Diego, California,
21 defendants PETTI and CALAC discussed by telephone the
22 upcoming Tribal Council meeting on December 30, 1987, and
23 the fact that defendant DE PENTO had represented to the
24 Tribal Council that defendant CALAC would not be
25 associated with management in any capacity.

26 24. On or about December 30, 1987, in San Diego, California
27 defendant DE PENTO appeared before the Rincon Triba
28 Council and represented that Sam Kaplan was the principa

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2 on behalf of whom the proposal for the gaming operatio
3 was being submitted.

4 25. On or about December 31, 1987, in San Diego, California
5 defendant DE PENTO asked defendant PETTI by telephone t
6 write down some questions "for the next time you talk t
7 Don" regarding certain conditions to be submitted as par
8 of the Kaplan proposal.

9 26. On or about January 13, 1988, in San Diego, California
10 defendant DE PENTO sent a letter to the Rincon Triba
11 Council containing details of the Kaplan proposal.

12 27. On or about January 16, 1988, defendant PETTI in Sa
13 Diego and defendant CARACCI in Chicago discussed t
14 telephone defendant ANGELINI'S expected trip to San Diec
15 to see the Rincon Reservation and to review the contract
16 for the Kaplan proposal with defendant DE PENTO, durin
17 which conversation defendant CARACCI told defendar
18 PETTI, "Listen, you and I, we're in on this f---ing thir
19 ... when it's time to chop it up, we're in somewhere."

20 28. On or about January 17, 1988, in San Diego, California
21 defendant PETTI advised defendant DE PENTO by telephon
22 that the Kaplan proposal had been approved by the Rinc
23 Tribal Council.

24 29. On or about January 19, 1988, defendant CARACCI
25 Chicago told defendant PETTI in San Diego by telepho
26 that defendant ANGELINI would arrive on Friday but wou
27 not stay the night in San Diego because "they told h
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2 about being real f---ing careful" and so that the police
3 would not "hook us all up together."

4 30. On or about January 19, 1988, defendants PETTI and DE
5 PENTO in San Diego, California, had a telephone
6 conversation during which they made arrangements to meet
7 with defendant ANGELINI during defendant ANGELINI's visit
8 to San Diego.

9 31. On or about January 22, 1988, defendant PETTI in San
10 Diego had a telephone conversation with defendant
11 ANGELINI in Los Angeles in which he gave defendant
12 ANGELINI directions on how to get to defendant DE PENTO's
13 office at 1067 Front Street, San Diego.

14 32. On or about January 22, 1988, defendants ANGELINI, DE
15 PENTO, and PETTI had a meeting at defendant DE PENTO's
16 office at 1067 Front Street, San Diego.

17 33. On or about February 1, 1988, defendant PETTI in San
18 Diego told defendant CARACCI in Chicago by telephone that
19 defendant ANGELINI had selected a person in Florida, who
20 already had approval from the BIA, to run the Rincon
21 gaming operation and thus "you won't have to use this
22 f---ing Sam," to which Caracci responded, "We'll just
23 switch the names then, right?," to which Petti replied,
24 "That's all, that's no problem."

25 34. On or about February 2, 1988, in San Diego, California,
26 defendant CALAC told defendant PETTI by telephone that an
27 Armenian man had doubled his offer to the Tribal Council.
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1
2 for the gaming operation and was now in competition with
3 the Kaplan proposal.

4 35. On or about February 8, 1988, defendant CARACCI in
5 Chicago told defendant PETTI in San Diego by telephone
6 that he had told defendant ANGELINI that the Indians had
7 submitted Sam Kaplan's name for approval by the BIA
8 because they did not know that defendant ANGELINI was
9 procuring another individual whose name would go on the
10 proposal.

11 36. On or about February 25, 1988, in San Diego, California,
12 defendants PETTI, CALAC and DE PENTO held a meeting in
13 defendant DE PENTO'S law office, during which they
14 discussed the possibility of offering the Rincon Indians
15 a larger monthly fee in exchange for a contract that
16 denied the Rincon Indians the right to oversee the
17 operation or be involved in the accounting.

18 37. On or about February 26, 1988, defendant PETTI in San
19 Diego told defendant CARACCI in Chicago by telephone that
20 the Indians wanted to know by Sunday if the monthly
21 guarantee could be increased from \$25,000 to \$30,000, in
22 exchange for which the Indians would have "no management
23 or nothing, they can't get behind, no counting of the
24 money, no nothing," to which defendant CARACCI replied he
25 would try to have defendant ANGELINI call defendant DE
26 PENTO with the answer.

27 38. On or about March 2, 1988, defendant CARACCI in Chicago
28 told defendant PETTI in San Diego by telephone that

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2 defendant ANGELINI was hesitant to invest in the Rincon
3 operation because a similar operation he had was losing
4 money, and "all his f---ing years he's always used his
5 own B.R. [bankroll], and when you use your own B.R., if
6 you blow, it doesn't mean anything But he don't
7 wanna go into these guys and f----ing blow He don't
8 know what the f--- they're gonna do."

9 39. On or about March 3, 1988, in San Diego, California,
10 defendant CALAC told defendant PETTI by telephone that
11 the Kaplan proposal had been well received at the Tribal
12 Council meeting the previous evening, and that "I hope
13 the payroll starts right away, at least for us."

14 40. On or about March 8, 1988, defendant CARACCI in Chicago
15 and defendant PETTI in San Diego discussed by telephone
16 whether defendant ANGELINI might "back off" the Rincon
17 deal, and defendant CARACCI said, "I'm gonna tell Donald
18 to call Nick."

19 41. On or about March 17, 1988, defendant CARACCI in Chicago
20 told defendant PETTI in San Diego by telephone that "we
21 all sat down" and decided not to invest in the Rincon
22 operation because a similar operation "back east" was
23 losing money, but that defendant CARACCI's "guy" had
24 suggested that defendant PETTI try to find someone local
25 who was willing to invest in the deal; defendant CARACCI
26 added that defendant ANGELINI had spoken highly of
27 defendants PETTI and DE PENTO to "these two guys here,
28 to which defendant PETTI responded that he was going to

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2 meet someone from New York who "f---- with ... what goes
3 up your nose" and was supposed to have "plenty of money,"
4 and defendant CARACCI replied that if the Rincon Indian
5 deal went forward, defendant CARACCI wanted to run the
6 snack shop because "I got a guy that I want to throw in
7 there."

8 42. On or about March 22, 1988, in San Diego, California,
9 defendant DE PENTO sent a letter to the Rincon Tribal
10 Council apologizing for the unavailability of his client
11 Sam Kaplan.

12 43. On or about April 8, 1988, defendants PETTI and CALAC
13 took FBI Special Agent Peter J. Ahearn, who was posing in
14 an undercover capacity as "Peter Carmassi," a money
15 launderer for Colombia cocaine drug dealers, on a tour of
16 the Rincon gaming facility in San Diego County,
17 California.

18 44. On or about April 8, 1988, in San Diego, California
19 defendant PETTI told Agent Ahearn that they had to be
20 careful about "O.C. connections."

21 45. On or about April 10, 1988, in San Diego, California,
22 defendant CALAC told defendant PETTI in a telephone
23 conversation that the Tribal Council had agreed to put
24 the card room in defendant CALAC's name after defendant
25 CALAC told them he had borrowed the money for the
26 operation.

27 46. On or about April 13, 1988, defendant PETTI in San Diego
28 told defendant CARACCI in Chicago in a telephone

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2 conversation that Agent Ahearn was interested in the
3 Rincon operation, and defendant CARACCI said that if
4 Agent Ahearn succeeded in opening the gaming operation,
5 "we're in."

6 47. On or about April 19, 1988, defendant PETTI in San Diego
7 told defendant CARACCI in Chicago by telephone that Agent
8 Ahearn was coming to San Diego to meet with defendant DE
9 PENTO, and that "we could open that f---ing joint, we got
10 a shot at it" to which defendant CARACCI replied, "We'll
11 grab something off for ourselves, you know what I mean?,"
12 and defendant PETTI responded, "Well, naturally we're
13 gonna have a piece."

14 48. On or about April 22, 1988, in San Diego, California
15 defendants PETTI and DE PENTO had a meeting with Agent
16 Ahearn in defendant DE PENTO's law office, during which
17 defendant DE PENTO asked Agent Ahearn if he would agree
18 to form a corporation operated by defendant GLEN CALAC to
19 run the Rincon gaming operation; and defendant PETTI
20 noted that if the federal government ever found out about
21 his involvement, they would shut the operation down, to
22 which defendant DE PENTO agreed that the closing would be
23 justified on the grounds that there was an "undisclosed
24 hidden ownership and there is organized crime involved on
25 a federal reservation."

26 49. On or about April 27, 1988, in San Diego County
27 California, defendants DE PENTO and CALAC appeared before
28 the Rincon Tribal Council and proposed that defendant

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2 CALAC head a corporation, formed by defendant DE PENTO,
3 to manage the card room on behalf of some investors from
4 Palm Springs.

5 50. On or about April 29, 1988, defendants CARACCI, DE PENTO
6 and PETTI had a meeting at the Plaza International Hotel
7 in San Diego.

8 51. On or about May 21, 1988, defendant PETTI in San Diego
9 told Agent Ahearn by telephone that defendant PETTI had
10 given defendant DE PENTO \$50,000 as defendant PETTI's
11 investment in the Rincon deal.

12 52. On or about May 24, 1988, defendant DE PENTO in San Diego
13 told Agent Ahearn by telephone that defendant PETTI had
14 given him \$50,000 for construction of the Rincon card
15 room.

16 53. On or about May 25, 1988, defendant Petti in San Diego
17 asked defendant CARACCI in Chicago by telephone whether
18 defendant CARACCI could provide some counterfeit money
19 for defendant PETTI to show Agent Ahearn as defendant
20 PETTI's share of the Rincon investment, and defendant
21 CARACCI discussed the possibility of "skimming a little
22 off the top" once the games were open.

23 54. On or about May 31, 1988, defendant CARACCI in Chicago
24 told defendant PETTI in San Diego by telephone that it
25 would be "perfect" if the Rincon application fee went to
26 defendant CALAC because "he's our guy," and defendant
27 PETTI said he had explained to Agent Ahearn that
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2 defendant CALAC was "just fronting it; he ain't gonna
3 handle no money."

4 55. On or about June 1, 1988, in San Diego, California,
5 defendants DE PENTO and PETTI had a telephone discussion
6 regarding the upcoming viewing by Agent Ahearn of the
7 money that was supposedly PETTI's investment in the
8 Rincon deal.

9 56. On or about June 1, 1988, in San Diego, California,
10 defendants PETTI and DE PENTO had a meeting with Agent
11 Ahearn in the law office of defendant DE PENTO, during
12 which time defendant PETTI told Agent Ahearn that he
13 "represents Chicago" and that Chicago would have a piece
14 of defendant PETTI's end of the deal.

15 57. On or about June 1, 1988, defendant DE PENTO took Agent
16 Ahearn to the Wells Fargo Bank in downtown San Diego and
17 showed him approximately \$30,000 cash in a safety deposit
18 box.

19 58. On or about June 2, 1988, in San Diego, California,
20 defendant PETTI told defendant CALAC by telephone that
21 Agent Ahearn had left \$50,000 with defendant DE PENTO,
22 and they would have to make \$50,000 worth of construction
23 on the reservation look like they had actually spent
24 \$100,000.

25 59. On or about June 13, 1988, defendant DE PENTO accompanied
26 Agent Ahearn to the Wells Fargo Bank in downtown San
27 Diego to view approximately \$200,000 in cash in a safety
28 deposit box.

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2 60. On or about June 13, 1988, in San Diego, California,
3 defendants DE PENTO and PETTI had a meeting with Agent
4 Ahearn in defendant DE PENTO's law office, at which time
5 defendant DE PENTO told Agent Ahearn the approval process
6 might be expedited because defendant CALAC's name would
7 be on the proposal, and defendant PETTI accepted
8 approximately \$6,500 from Agent Ahearn to pay for the
9 processing fee for the proposal.

10 61. On or about July 6, 1988, defendant CARACCI in Chicago
11 told defendant PETTI in San Diego by telephone that
12 "they" were worried that Agent Ahearn was "getting a
13 little shaky," but that "they're looking forward to this,
14 you know, I mean there's a f---ing drive out here
15 They'd be real happy with that thing out there if that
16 thing flies, you know, for us."

17 62. On or about July 6, 1988, in San Diego, California,
18 defendant DE PENTO mailed a copy of the revised Rincon
19 gaming proposal to a name and address in New Jersey
20 previously provided by Agent Ahearn.

21 63. On or about July 12, 1988, defendant PETTI in San Diego
22 told defendant CARACCI in Chicago by telephone that the
23 new proposal was written "like" defendant CALAC owned the
24 management corporation and simply had defendant PETTI's
25 men as management advisors.

26 64. On or about July 14, 1988, in San Diego, California,
27 defendant PETTI met with Agent Ahearn at The Cotton Patch
28 restaurant and explained that defendant PETTI represented

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2 the Chicago LCN in the Rincon venture and thus Agent
3 Ahearn did not have to worry about his investment being
4 protected.

5 65. On or about July 23, 1988, defendant CARACCI in Chicago
6 asked defendant PETTI in San Diego by telephone whether
7 defendant PETTI had explained "the facts of life" to
8 Agent Ahearn, and defendant PETTI responded that he had
9 done so the previous Friday.

10 66. On or about July 26, 1988, in San Diego, California,
11 defendant DE PENTO mailed a copy of a revised gaming
12 proposal to the attorney for the Rincon Tribal Council.

13 67. On or about August 12, 1988, in San Diego, California,
14 defendant DE PENTO mailed a letter to the Rincon Tribal
15 Council containing certain modifications in the Calac
16 proposal.

17 68. On or about August 17, 1988, in San Diego, California,
18 defendants DE PENTO and CALAC appeared before the Rincon
19 Business Council, at which time they argued that
20 defendant CALAC's criminal record would not prevent his
21 approval by the Bureau of Indian Affairs because of his
22 status as a tribe member, and defendant CALAC refused to
23 disclose the source of funding for his management
24 company.

25 69. On or about August 24, 1988, in San Diego, California,
26 defendant DE PENTO mailed a letter to the Rincon Tribal
27 Council regarding defendant CALAC's management gaming
28 proposal.

Pignatello Extortion

70. On or about March 17, 1988, defendant PETTI in San Diego told defendant CARACCI in Chicago by telephone that he would send defendants CARMEN SALVATORE DINUNZIO and ANTHONY LOUIS DINUNZIO to Las Vegas to tell Joseph Pignatello that "there's information from back in Chicago that you owed a hundred thousand to Tony and they want the money."

71. On or about April 6, 1988, defendant CARMEN SALVATORE DINUNZIO in Los Angeles told defendant PETTI in San Diego by telephone that he was going to Las Vegas that evening to see Joe Pignatello.

72. On or about April 13, 1988, defendant PETTI in San Diego told defendant CARACCI in Chicago by telephone that defendants CARMEN SALVATORE DINUNZIO and ANTHONY LOUIS DINUNZIO had travelled to Las Vegas to see Joseph Pignatello about repayment of an existing debt to Tony Spilotro, and defendant CARACCI told defendant PETTI to warn defendant JOHN PAUL SPILOTRO not to "get too chummy" with Joseph Pignatello.

73. On or about April 15, 1988, defendant PETTI in San Diego told defendant CARMEN SALVATORE DINUNZIO in Los Angeles by telephone to tell Joe Pignatello that out of respect to defendant JOHN PAUL SPILOTRO, Pignatello's debt to Chicago would be reduced from \$100,000 to \$50,000, and that Chicago never received any of the money that Pignatello claimed to have repaid to Tony Spilotro.

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2 74. On or about April 15, 1988, defendant PETTI in San Diego
3 had a telephone conversation with Vinnie Montalto in Las
4 Vegas in which Montalto confirmed that he believed Joseph
5 Pignatello owed Tony Spilotro approximately \$100,000.
- 6 75. On or about April 19, 1988, defendant PETTI in San Diego
7 agreed with defendant CARACCI in Chicago by telephone
8 that defendant PETTI would tell Joe Pignatello that he
9 had to repay the debt he owed to Tony Spilotro because
10 "Chicago never got a f---ing quarter" of anything
11 Pignatello claimed to have already paid.
- 12 76. On or about May 31, 1988, defendant PETTI in San Diego
13 agreed with defendant CARACCI in Chicago in a telephone
14 conversation to tell Joseph Pignatello that if he goes
15 back to Chicago without the money, then he should "get a
16 one way ticket."
- 17 77. On or about July 8, 1988, defendant PETTI in San Diego
18 told defendant CARMEN SALVATORE DINUNZIO by telephone to
19 call Joseph Pignatello on the telephone and tell
20 Pignatello that he had to pay \$50,000, and if Pignatello
21 said anything about going to Chicago he should be told
22 "if you go back with money, buy yourself a two way
23 ticket. If you don't go back with any money, buy
24 yourself a one way ticket."
- 25 78. On or about July 8, 1988, defendant JOHN PAUL SPILOTRO in
26 Las Vegas told defendant PETTI in San Diego by telephone
27 that he had just talked to Joseph Pignatello, who was
28 "panic-stricken," and that when he next saw Pignatello he

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2 would "lay it on him a little bit" and tell him "it's
3 coming from back east like the last time."

4 79. On or about July 11, 1988, defendant DINUNZIO in Los
5 Angeles told defendant PETTI in San Diego by telephone
6 that he had visited Joseph Pignatello and told him that
7 if Pignatello went back to Chicago, "take a one way
8 ticket, pal, because you ain't coming back."

9 80. On or about July 23, 1988, defendant CARMEN SALVATORE
10 DINUNZIO in San Diego told defendant CARACCI in Chicago
11 by telephone that he had told Joseph Pignatello that
12 Pignatello would be charged two points a week on the
13 money if he did not pay soon, and that Pignatello was
14 "scared to death."

15 81. On or about September 1, 1988, defendant CARMEN SALVATORE
16 DINUNZIO in Los Angeles told defendant PETTI in San Diego
17 by telephone that arrangements had been made to collect
18 money from Joseph Pignatello the next day in Las Vegas.

19 82. On or about September 2, 1988, defendant PETTI in San
20 Diego told defendant CARACCI in Chicago by telephone that
21 defendants CARMEN SALVATORE DINUNZIO and ANTHONY LOUIS
22 DINUNZIO would be picking up \$15,000 from Joseph
23 Pignatello that day.

24 83. On or about September 2, 1988, defendant CARACCI in
25 Chicago told defendant PETTI in San Diego by telephone
26 that defendant PETTI should keep half of the money
27 obtained from Joseph Pignatello and send the other half
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2 to Chicago, where defendant CARACCI would "chop it up
3 with these two guys here."

4 84. On or about September 2, 1988, defendant ANTHONY LOUIS
5 DINUNZIO met with Joseph Pignatello at the Mint Hotel and
6 Casino in Las Vegas, Nevada.

7 85. On or about September 2, 1988, defendant ANTHONY LOUIS
8 DINUNZIO travelled from Las Vegas, Nevada to San Diego,
9 California.

10 86. On or about September 2, 1988, defendant CARMEN SALVATORE
11 DINUNZIO in Los Angeles told defendant PETTI in San Diego
12 by telephone that Joseph Pignatello had turned over
13 \$15,000 that day and would produce the rest of the money
14 later.

15 87. On or about September 3, 1988, defendant CARACCI in
16 Chicago told defendant CARMEN SALVATORE DINUNZIO in San
17 Diego by telephone how the money was to be divided,
18 explaining, "we go half, we're partners on that, you
19 know, you understand."

20 88. On or about September 11, 1988, defendant PETTI in San
21 Diego had a telephone conversation with Joseph Pignatello
22 in Las Vegas.

23 89. On or about September 12, 1988, defendant CARMEN
24 SALVATORE DINUNZIO in Los Angeles told defendant PETTI in
25 San Diego by telephone that Joseph Pignatello was selling
26 his boat and taking his child out of school to raise the
27 rest of the money.
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2 90. On or about September 14, 1988, defendant PETTI in San
3 Diego called Joseph Pignatello in Las Vegas and told
4 Pignatello that "they want a date or something" when
5 Pignatello would be able to pay the rest of the money.

6 91. On or about September 14, 1988, defendant CARACCI in
7 Chicago told defendant PETTI in San Diego by telephone
8 that defendant PETTI should tell Pignatello, "you give us
9 a f---ing date, and then you're gonna commit to that
10 date. You gotta do something. Go to somebody and borrow
11 it, then let them wait."

12 92. On or about October 14, 1988, defendants CARMEN SALVATORI
13 DINUNZIO and ANTHONY LOUIS DINUNZIO collected \$12,000
14 from Joseph Pignatello in Las Vegas.

15 93. On or about October 17, 1988, defendant CARACCI in
16 Chicago instructed defendant PETTI in San Diego by
17 telephone to send \$6,000 of the money collected from
18 Joseph Pignatello to defendant CARACCI in Chicago via
19 Federal Express.

20 94. On or about October 18, 1988, in San Diego, California,
21 defendant PETTI mailed \$6,000 in cash to defendant
22 CARACCI in Illinois.

23 All in violation of Title 18, United States Code, Section 371.

24 Count 2

25 (CONSPIRACY TO EXTORT)

26 The Introductory Allegations 1 through 6 to this indictment
27 are hereby incorporated by reference as if set forth in full
28 herein.

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2 Beginning at a time unknown to the grand jury, but at least as
3 early as June, 1987, until about April, 1989, within the Southern
4 District of California, the District of Nevada, and elsewhere,
5 defendants SAMUEL ANTHONY CARLISI, JOHN DIFRONZO, MICHAEL CLEMENT
6 CARACCI, CHRIS PETTI, aka Chris George Poulos, JOHN PAUL SPILOTRO,
7 CARMEN SALVATORE DINUNZIO, ANTHONY LOUIS DINUNZIO, and others, did
8 knowingly and willfully conspire to participate in the use of
9 extortionate means to collect and attempt to collect extensions of
10 credit, on behalf of the Chicago family of organized crime, from
11 certain individuals, to wit: Joseph Pignatello, Fred "Sarge"
12 Ferris, George Macey and Robert Veltri, by collecting and
13 attempting to collect extensions of credit by expressly and
14 implicitly threatening to use violence and other criminal means to
15 cause harm to the person, reputation, and property of the victims;
16 in violation of Title 18, United States Code, Sections 894.

17 METHOD AND MEANS OF THE CONSPIRACY

18 It was a part of the conspiracy that defendant MICHAEL CLEMENT
19 CARACCI, acting on behalf of defendants SAMUEL ANTHONY CARLISI and
20 JOHN DIFRONZO in Chicago, would direct defendants CHRIS PETTI, aka
21 Chris George Poulos, JOHN PAUL SPILOTRO, CARMEN SALVATORE DINUNZIO,
22 and ANTHONY LOUIS DINUNZIO to extort payments from certain
23 individuals the defendants claimed owed money to the late Tony
24 Spilotro, a crew chief in the Chicago family of organized crime,
25 who was based in Las Vegas, Nevada.

26 //

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the following overt acts occurred within the Southern District of California unless otherwise noted:

Pignatello Extortion

Overt Acts 70 through 94 of Count One are hereby incorporated by reference as if set forth in full herein as Overt Acts 1 through 25.

Ferris Extortion

26. On or about August 20, 1987, defendant PETTI in San Diego told defendant CARMEN SALVATORE DINUNZIO by telephone that Fred "Sarge" Ferris was "scared to death now," and that defendant CARMEN SALVATORE DINUNZIO should call Ferris and "go strong with him" because Ferris would think the call was coming "from Chicago."

27. On or about August 21, 1987, defendants CARMEN SALVATORE DINUNZIO and ANTHONY LOUIS DINUNZIO travelled from California to Las Vegas, Nevada, to meet with Fred "Sarge" Ferris.

28. On or about August 25, 1987, defendant CARACCI in Chicago told defendant PETTI in San Diego by telephone to "keep the pressure on" Ferris, and asked if Ferris knew "it's coming through Chicago."

29. On or about September 11, 1987, defendant CARACCI in Chicago told defendant PETTI in San Diego by telephone to check with Tony Spilotro's brother to see if he knew

1
2 whether Tony Spilotro had been collecting from Ferris at
3 the time of Tony Spilotro's death.

4 30. On or about October 21, 1987, defendant PETTI in San
5 Diego told defendant CARACCI in Chicago by telephone that
6 Ferris was supposed to be coming to San Diego, but that
7 defendant CARMEN SALVATORE DINUNZIO had gotten "a little
8 rough with him on the phone."

9 31. On or about November 11, 1987, defendant CARACCI in
10 Chicago told defendant PETTI in San Diego by telephone to
11 "tell them guys to stay on" Ferris because "they got
12 their intro now."

13 32. On or about March 7, 1988, defendant CARMEN SALVATORE
14 DINUNZIO in Los Angeles told defendant PETTI in San Diego
15 by telephone that he had recently travelled to Las Vegas
16 but Ferris had refused to meet with him, and that he felt
17 Ferris was "ripe."

18 33. On or about March 9, 1988, defendant CARMEN SALVATORE
19 DINUNZIO in Los Angeles told defendant PETTI in San Diego
20 by telephone that he would be meeting Ferris on Saturday
21 in Las Vegas, and that he had warned Ferris, "don't make
22 me come in for nothing."

23 34. On or about March 14, 1988, defendant CARMEN SALVATORE
24 DINUNZIO in Los Angeles told defendant PETTI in San Diego
25 by telephone that he had travelled to Las Vegas and told
26 Ferris, "When I come back you have all that money there.
27 I told him and I told him. I says, if you don't have the
28 money, I says, you're as good as dead. I says, you car

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2 go run to the law. You'll still be dead," and that
3 Ferris "really was shaken up."

4 35. On or about March 17, 1988, defendant CARACCI in Chicago
5 told defendant PETTI in San Diego by telephone that
6 defendant PETTI should tell John Spilotro to tell Ferris,
7 "you better do what the f--- them guys say because
8 they're for f---ing real. It's no bullshit and . . . I
9 would tell you as a friend, go along or you're liable to
10 get yourself f---ing hurt."

11 36. On or about March 18, 1988, defendant JOHN PAUL SPILOTRO
12 in Las Vegas told defendant PETTI in San Diego by
13 telephone that at one time Ferris had been very "close"
14 to Tony Spilotro, and he asked defendant PETTI what he
15 should do if FERRIS called him.

16 37. On or about April 15, 1988, defendant PETTI in San Diego
17 told defendant CARACCI in Chicago by telephone that
18 defendant JOHN PAUL SPILOTRO had told Ferris that the
19 defendants CARMEN SALVATORE DINUNZIO and ANTHONY LOUIS
20 DINUNZIO were "for real" and that defendant JOHN PAUL
21 SPILOTRO had told Ferris, "If you want to, you better
22 check with Chicago."

23 38. On or about April 15, 1988, defendant PETTI in San Diego
24 told defendant CARMEN SALVATORE DINUNZIO in Los Angeles
25 by telephone not to worry about interference from Detroit
26 because Ferris "belongs" to Chicago and that Ferris
27 should be told to forget about Detroit.
28 //

Valtri Extortion

39. On or about September 11, 1987, defendant CARACCI in Chicago told defendant PETTI in San Diego by telephone that they might be able to get something "going" with Bob Valtri, and that defendant CARACCI was going to get approval for it "right at the top from here."

40. On or about October 21, 1987, defendant CARACCI in Chicago told defendant PETTI in San Diego by telephone to "go ahead" with Valtri, and to say "for starters, you owe fifteen thousand back there. They want that."

41. On or about November 11, 1987, defendant CARACCI in Chicago told defendant PETTI in San Diego by telephone that "you gotta stay on" Valtri, and "We gotta grab this guy."

42. On or about February 23, 1988, defendant CARACCI in Chicago told defendant PETTI in San Diego by telephone to tell Valtri, "hey, you were with that guy who was from Chicago, and you are f---ing continue gonna be with them, you're gonna be with Chicago And you just tell him, say listen, you gotta do the right f---ing thing here. Because if he doesn't, you're gonna get f---ing hurt on this thing."

43. On or about February 24, 1988, defendants PETTI and CARMEN SALVATORE DINUNZIO met with Robert Valtri in the parking lot of the Bicycle Club in Bell Gardens California.

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Macey Extortion

44. On or about March 4, 1988, defendants PETTI and CARMEN SALVATORE DINUNZIO met with Tom Spry at Pea Soup Anderson's Restaurant in Carlsbad, California.

45. On or about March 14, 1988, defendant PETTI in San Diego discussed with defendant CARMEN SALVATORE DINUNZIO by telephone the possibility of arranging for someone to bet directly into George Macey's bookmaking operation.

46. On or about April 15, 1988, defendant PETTI in San Diego told defendant CARMEN SALVATORE DINUNZIO by telephone that he was planning a meeting with Macey.

47. On or about April 22, 1988, defendant PETTI in San Diego told Ralph Donato in Los Angeles by telephone to postpone a meeting with Macey until the following week because defendant CARMEN SALVATORE DINUNZIO had too much "heat" at the moment.

48. On or about April 25, 1988, defendant CARACCI in Chicago told defendant PETTI in San Diego by telephone to go ahead and "grab" Macey but to be careful because of "the G."

49. On or about May 5, 1988, defendants PETTI and CARMEN SALVATORE DINUNZIO met with George Macey at a delicatessen in Los Angeles.

Counts 3 through 8

(MAIL FRAUD)

The Introductory Allegations to this indictment are hereby incorporated as if set forth in full herein.

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2 From prior to July, 1985 until about March, 1988, in the
3 Southern District of California and elsewhere, defendants SAMUEL
4 ANTHONY CARLISI, JOHN DIFRONZO, DONALD JOHN ANGELINI, MICHAEL
5 CLEMENT CARACCI, CHRIS PETTI, aka Chris George Poulos, NICHOLAS DE
6 PENTO, and GLEN MARTIN CALAC knowingly and willfully devised and
7 intended to devise a scheme and artifice to defraud the Tribal
8 Council of the Rincon Indians and the Bureau of Indian Affairs, as
9 described below, and to obtain money by means of false and
10 fraudulent pretenses, representations and promises.

11 The Scheme and Artifice to Defraud

12 It was a part of the scheme and artifice to defraud that the
13 defendants would attempt to obtain a contract with the Rincon
14 Indians to operate the gambling operations on the Rincon Indian
15 Reservation in San Diego County, California.

16 It was a further part of the scheme and artifice to defraud
17 that the defendants would not disclose to the Tribal Council or the
18 Bureau of Indian Affairs that the money invested in the gambling
19 operations was derived from organized criminal activity conducted
20 by the Chicago family of organized crime.

21 It was a further part of said scheme and artifice to defraud
22 that the defendants would use Sam Kaplan, a Los Angeles
23 businessman, as a "front" for the Chicago organized crime family's
24 hidden ownership of the Rincon gaming operations.

25 It was a further part of said scheme and artifice to defraud
26 that defendant GLEN MARTIN CALAC would represent to the Tribal
27 Council that he would run a management company to operate the
28 gaming operations on behalf of a group of Palm Springs investors.

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2 It was a further part of the scheme and artifice to defraud
3 that defendants would attempt to structure their proposal for
4 operation of the games to the Tribal Council in such a way as to
5 maximize the profits for defendants.

6 It was a further part of the scheme and artifice to defraud
7 that defendant NICHOLAS DE PENTO would serve as the local San Diego
8 lawyer for the defendants to negotiate and submit proposals to the
9 Tribal Council for operation of the gambling operations.

10 It was a further part of said scheme and artifice to defraud
11 that defendant GLEN MARTIN CALAC would use his position as a tribe
12 member in the Rincon Indians to obtain information regarding other
13 proposals for the Rincon gaming operations to give defendants a
14 competitive edge in obtaining the contract.

15 It was a further part of said scheme and artifice to defraud
16 that defendants SAMUEL ANTHONY CARLISI, JOHN DIFRONZO, DONALD JOHN
17 ANGELINI, MICHAEL CLEMENT CARACCI, CHRIS PETTI, aka Chris George
18 Poulos, NICHOLAS DE PENTO, GLEN MARTIN CALAC, and others, would
19 "skim" profits from the gaming operations without the knowledge of
20 the Rincon Indians.

21 It was a further part of said scheme and artifice to defraud
22 that the defendants would use the gambling operations on the Rincon
23 Indian Reservation to launder the proceeds of other illegal
24 activities of the Chicago organized crime family.

25 Having devised this scheme and artifice to defraud, defendants
26 SAMUEL ANTHONY CARLISI, JOHN DIFRONZO, DONALD JOHN ANGELINI,
27 MICHAEL CLEMENT CARACCI, CHRIS PETTI, aka Chris George Poulos,
28 NICHOLAS DE PENTO, and GLEN MARTIN CALAC would and did, for the

purpose of executing and attempting to execute said scheme and artifice to defraud, knowingly cause to be placed in authorized depositories for mail matter, on the dates set forth in Column A below, certain letters from Nicholas De Panto, Attorney at Law, 1067 Front Street, San Diego, California 92101, to the addresses set forth in Column B below, to be sent and delivered by the United States Postal Service, according to the directions thereon:

Count	Column A Date	Column B Addressee
3	March 1, 1987	Business Council Rincon Indian Reservation c/o Richard M. Sola P.O. Box 186 San Marcos, CA 92069
4	April 27, 1987	Richard M. Sola 332 Rancheros Drive, Suite 201 P.O. Box 186 San Marcos, CA 92069-0081
5	December 11, 1987	Rick Mazzetti Rincon Market Rincon Indian Reservation Highway S-6 (North of Valley Center, California)
6	December 18, 1987	Rincon Tribal Council P.O. Box 68 Valley Center, Calif. 92082
7	January 13, 1988	Rincon Tribal Council P.O. Box 68 Valley Center, Calif. 92082
8	March 22, 1988	Rincon Tribal Council P.O. Box 68 Valley Center, Calif. 92082

All in violation of Title 18, United States Code, Sections 1341 and

2.

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Counts 9 and 10(WIRE FRAUD)

The Introductory Allegations to this indictment are hereby incorporated by reference as if set forth in full herein.

On the dates set forth in Column A below, within the Southern District of California and elsewhere, defendants SAMUEL ANTHONY CARLISI, JOHN DIFRONZO, DONALD JOHN ANGELINI, MICHAEL CLEMENT CARACCI, CHRIS PETTI, aka Chris George Poulos, NICHOLAS DE PENTO, and GLEN MARTIN CALAC, and others, having devised the scheme and artifice to defraud described in Counts 3 through 8 above and hereby incorporated as if set forth in full herein, would and did, for the purpose of executing said scheme and artifice to defraud, transmit and cause to be transmitted by means of wire communications certain signals and sounds, that is, telephone calls between defendant MICHAEL CLEMENT CARACCI in Illinois and defendant CHRIS PETTI in San Diego at the locations and telephone numbers as set forth in Column B below:

Count	Column A Date	Column B Location
9	December 22, 1987	Pay telephone 7-11 Store 2920 Adrian Street San Diego, California (619) 226-7135
10	February 26, 1988	Law Offices of Nicholas De Pento 1067 Front Street San Diego, California (619) 236-1151

All in violation of Title 18, United States Code, Sections 1343 and 2.

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Count 11

(EXTORTION)

Introductory Allegations 1 through 6 to this indictment are hereby incorporated by reference as if set forth in full herein.

From in or about March, 1988, until about April, 1989, within the Southern District of California, the District of Nevada and elsewhere, defendants SAMUEL ANTHONY CARLISTI, JOHN DIFRONZO, MICHAEL CLEMENT CARACCI, CHRIS PETTI, aka Chris George Poulos, JOHN PAUL SPILOTRO, CARMEN SALVATORE DINUNZIO, ANTHONY LOUIS DINUNZIO, and others, knowingly participated in the use of extortionate means to collect and attempt to collect an extension of credit from Joseph Pignatello, by collecting and attempting to collect from Joseph Pignatello an extension of credit by expressly and implicitly threatening to use violence and other criminal means to cause harm to the person, reputation, and property of Joseph Pignatello; in violation of Title 18, United States Code, Sections 894 and 2.

Count 12

(ITAR)

Introductory Allegations 1 through 6 to this indictment are hereby incorporated by reference as if set forth in full herein.

On or about September 2, 1988, within the Southern District of California, the District of Nevada and elsewhere, defendants SAMUEL ANTHONY CARLISTI, JOHN DIFRONZO, MICHAEL CLEMENT CARACCI, CHRIS PETTI, aka Chris George Poulos, JOHN PAUL SPILOTRO, CARMEN SALVATORE DINUNZIO, ANTHONY LOUIS DINUNZIO, and others, knowingly travelled in interstate commerce, to wit, from Nevada to

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2 California, and knowingly and intentionally aided, abetted,
3 counselled, commanded, induced, procured, and willfully caused such
4 travel, with intent to distribute the proceeds of an unlawful
5 activity, to wit, the extortion of Joseph Pignatello, in violation
6 of Nevada Revised Statute § 207.190 ("Coercion"), and thereafter
7 performed and attempted to perform the distribution of such
8 proceeds; in violation of Title 18, United States Code,
9 Sections 1952(a)(1) and 2.

10 Count 13

11 (EXTORTION)

12 Introductory Allegations 1 through 6 to this indictment are
13 hereby incorporated by reference as if set forth in full herein.

14 From in or about March, 1988, until about April, 1989, within
15 the Southern District of California, the District of Nevada and
16 elsewhere, defendants MICHAEL CLEMENT CARACCI, CHRIS PETTI, aka
17 Chris George Poulos, JOHN PAUL SPILOTRO, CARMEN SALVATORE DINUNZIO,
18 and ANTHONY LOUIS DINUNZIO, and others, knowingly participated in
19 the use of extortionate means to collect and attempt to collect an
20 extension of credit from Fred "Sarge" Ferris, by collecting and
21 attempting to collect from Fred "Sarge" Ferris payments for an
22 extension of credit by expressly and implicitly threatening to use
23 violence and other criminal means to cause harm to the person,
24 reputation, and property of Fred "Sarge" Ferris; in violation of
25 Title 18, United States Code, Sections 894 and 2.

26 //

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2 Count 14

3 (EXTORTION)

4 Introductory Allegations 1 through 6 to this indictment are
5 hereby incorporated by reference as if set forth in full herein.

6 From about March, 1988 until May, 1988, within the Southern
7 and Central Districts of California and elsewhere, defendants
8 MICHAEL CLEMENT CARACCI, CHRIS PETTI, aka Chris George Poulos, and
9 CARMEN SALVATORE DINUNZIO knowingly participated in the use of
10 extortionate means to collect and attempt to collect an extension
11 of credit from George Macey, by collecting and attempting to
12 collect from George Macey payments for an extension of credit by
13 expressly and implicitly threatening to use violence and other
14 criminal means to cause harm to the person, reputation, and
15 property of George Macey; in violation of Title 18, United States
16 Code, Sections 894 and 2.

17 Count 15

18 (RACKETEERING)

19 INTRODUCTORY ALLEGATIONS

20 1. The Introductory Allegations 1 through 9 to this
21 indictment are hereby incorporated by reference as if set forth in
22 full herein.

23 2. The organization described in paragraphs 1 through 6 of
24 the Introductory Allegations to this indictment constituted an
25 enterprise (herein referred to as the "Chicago organized crime
26 family") as defined by Title 18, United States Code, Section
27 1961(4) -- that is, a group of individuals associated in fact,
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2 although not a legal entity, which enterprise was engaged in and
3 the activities of which affected interstate commerce.

4 3. Defendants CHRIS PETTI, aka Chris George Poulos, MICHAEL
5 CLEMENT CARACCI, JOHN PAUL SPILOTRO, CARMEN SALVATORE DINUNZIO,
6 ANTHONY LOUIS DINUNZIO, and others known and unknown to the grand
7 jury, were members and associates of the enterprise.

8 4. From prior to July, 1985 and continuing thereafter up to
9 and including April 7, 1989, in the Southern District of California
10 and elsewhere, defendants MICHAEL CLEMENT CARACCI, CHRIS PETTI, aka
11 Chris George Poulos, JOHN PAUL SPILOTRO, CARMEN SALVATORE DINUNZIO,
12 ANTHONY LOUIS DINUNZIO, and others known and unknown to the grand
13 jury, being associated with and employed by the above-described
14 enterprise, did unlawfully, willfully and knowingly conduct and
15 participate, directly and indirectly, in the conduct of the affairs
16 of that enterprise, which was engaged in and the activities of
17 which affected interstate commerce, through a pattern of
18 racketeering activity, that is through the commission of the
19 Racketeering Acts set forth below, with each of the defendants
20 participating in the commission of at least two of these acts:

21 Racketeering Acts

22 The pattern of racketeering activity as defined in Title 18,
23 United States Code, Sections 1961(1) and 1961(5) consisted of the
24 following acts:

25 Racketeering Act 1:

26 From sometime prior to but at least as early as July, 1985
27 until March, 1988, in the Southern District of California and
28 elsewhere, defendants MICHAEL CLEMENT CARACCI, CHRIS PETTI, aka

1
2 Chris George Poulos, and others, knowingly and willfully devised
3 and intended to devise a scheme and artifice to defraud the Tribal
4 Council of the Rincon Indians and the Bureau of Indian Affairs, as
5 described below, and to obtain money and property by means of false
6 and fraudulent pretenses, representations and promises.

7 The Scheme and Artifice to Defraud

8 It was a part of the scheme and artifice to defraud that the
9 defendants would and did agree among themselves to obtain the
10 contract with the Rincon Indians to operate the gambling operations
11 on the Rincon Indian Reservation in San Diego County.

12 It was a further part of said scheme and artifice that the
13 defendants would not disclose to the Rincon Tribal Council and the
14 Bureau of Indian Affairs that the money invested in the gambling
15 operations was derived from organized criminal activity conducted
16 by the Chicago organized crime family.

17 It was a further part of said scheme and artifice that
18 defendant GLEN MARTIN CALAC would use his position as a tribe
19 member in the Rincon Indians to obtain information regarding other
20 proposals for the Rincon gaming operations to give defendants a
21 competitive edge in obtaining the contract.

22 It was a further part of said scheme and artifice that the
23 defendants would use Sam Kaplan, a Los Angeles businessman, as a
24 "front" in submitting a proposal to obtain the gambling contract
25 and to mask the Chicago organized crime family's hidden ownership
26 of the Rincon gaming operations.

27 It was a further part of said scheme and artifice to defraud
28 that the defendant GLEN MARTIN CALAC would represent to the Triba:

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2 Council that he would run a management company to operate the
3 gaming operations on behalf of a group of Palm Springs investors.

4 It was a further part of said scheme and artifice that the
5 defendants would attempt to structure their proposal for operation
6 of the games to the Tribal Council in such a way as to maximize the
7 profits for defendants.

8 It was a further part of said scheme and artifice that
9 attorney Nicholas De Pento would serve as the local San Diego
10 lawyer for the defendants to negotiate and submit proposals to the
11 Tribal Council for operation of the gambling operations.

12 It was a further part of said scheme and artifice that
13 defendants CHRIS PETTI, aka Chris George Poulos, MICHAEL CLEMENT
14 CARACCI, and others, would "skim" profits from the gaming
15 operations for the benefit of the enterprise without the knowledge
16 of the Rincon Indians.

17 It was a further part of said scheme and artifice that the
18 defendants would use the gambling operations on the Rincon Indian
19 Reservation to launder the proceeds of other illegal activities of
20 the Chicago organized crime family.

21 Having devised this scheme and artifice to defraud, defendants
22 MICHAEL CLEMENT CARACCI, CHRIS PETTI, aka Chris George Poulos, and
23 others, would and did, for the purpose of executing and attempting
24 to execute said scheme and artifice to defraud, knowingly cause to
25 be placed in authorized depositories for mail matter, on the dates
26 set forth in Column A below, certain letters from Nicholas De
27 Pento, Attorney at Law, 1067 Front Street, San Diego, California
28 92101, to the addresses set forth in Column B below, to be sent and

delivered by the United States Postal Service, according to the direction thereon:

<u>Racketeering</u> <u>Act</u>	<u>Column A</u> <u>Date</u>	<u>Column B</u> <u>Addressee</u>
1(a)	March 1, 1987	Business Council Rincon Indian Reservation c/o Richard M. Sola P.O. Box 186 San Marcos, CA 92069
1(b)	April 27, 1987	Richard M. Sola 332 Rancheros Drive, Suite 201 P.O. Box 186 San Marcos, CA 92069-0081
1(c)	December 11, 1987	Rick Mazzetti Rincon Market Rincon Indian Reservation Highway S-6 (North of Valley Center, California)
1(d)	December 18, 1987	Rincon Tribal Council P.O. Box 68 Valley Center, Calif. 92082
1(e)	January 13, 1988	Rincon Tribal Council P.O. Box 68 Valley Center, Calif. 92082
1(f)	March 22, 1988	Rincon Tribal Council P.O. Box 68 Valley Center, Calif. 92082

All in violation of Title 18, United States Code, Sections 1341 and 2.

In addition, on the dates set forth in Column A below, having devised this scheme and artifice to defraud, defendants MICHAEL CLEMENT CARACCI, CHRIS PETTI, aka Chris George Poulos, and others, would and did, for the purpose of executing said scheme and artifice to defraud, transmit and cause to be transmitted by means of wire communications certain signals and sounds, that is,

telephone calls between defendant MICHAEL CLEMENT CARACCI in Illinois and defendant CHRIS PETTI in San Diego at the locations and telephone numbers as set forth in Column B below:

<u>Racketeering Act</u>	<u>Column A Date</u>	<u>Column B Location</u>
1(g)	December 22, 1987	Pay telephone 7-11 Store 2920 Adrian Street San Diego, California (619) 226-7135
1(h)	February 26, 1988	Law Offices of Nicholas De Pento 1067 Front Street San Diego, California (619) 236-1151

All in violation of Title 18, United States Code, Sections 1343 and 2.

With respect to the fraudulent scheme described above, any of the acts listed in 1(a) through 1(h) alone constitutes the commission of Racketeering Act One.

Racketeering Acts 2(a) and 2(b):
(Extortion of Joseph Pignatello)

With respect to the extortion of Joseph Pignatello, either of the following acts alone constitutes the commission of Racketeering Act Two:

Racketeering Act 2(a): From in or about March, 1988, until about April, 1989, within the Southern District of California, the District of Nevada, and elsewhere, defendants MICHAEL CLEMENT CARACCI, CHRIS PETTI, aka Chris George Poules, JOHN PAUL SPILOTRO, CARMEN SALVATORE DINUNZIO, ANTHONY LOUIS DINUNZIO, and others, knowingly participated in the use of extortionate

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2 means to collect and attempt to collect an extension of
3 credit from Joseph Pignatello, by collecting and
4 attempting to collect from Joseph Pignatello payments for
5 an extension of credit by expressly and implicitly
6 threatening to use violence and other criminal means to
7 cause harm to the person, reputation, and property of
8 Joseph Pignatello; in violation of Title 18, United
9 States Code, Sections 894 and 2.

10 Racketeering Act 2(b): From in or about March,
11 1988, until about April, 1989, within the Southern
12 District of California, the District of Nevada and
13 elsewhere, defendants MICHAEL CLEMENT CARACCI, CHRIS
14 PETTI, aka Chris George Poulos, JOHN PAUL SPILOTRO,
15 CARMEN SALVATORE DINUNZIO, ANTHONY LOUIS DINUNZIO, and
16 others, knowingly travelled in interstate commerce, to
17 wit, from California to Nevada and back, and knowingly
18 and intentionally aided, abetted, counselled, commanded,
19 induced, procured, and willfully caused such travel, with
20 intent to promote, manage, establish, carry on and
21 facilitate the promotion, management, establishment, and
22 carrying on of an unlawful activity, to wit, the
23 extortion of Joseph Pignatello, in violation of Nevada
24 Revised Statute § 207.190 ("Coercion"), and thereafter
25 performed and attempted to perform such extortion; in
26 violation of Title 18, United States Code,
27 Sections 1952(a)(3) and 2.

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Racketeering Act 3:

(Extortion of Rosario "Ross" Lantieri)

In and about July, 1988, within the Southern and Central Districts of California, and elsewhere, defendants CHRIS PETTI, aka Chris George Poulos, CARMEN SALVATORE DINUNZIO, and ANTHONY LOUIS DINUNZIO, did knowingly and unlawfully attempt, by means of threat and the wrongful use of force and fear, to extort money and property from Rosario "Ross" Lantieri, in violation of California Penal Code § 524.

Racketeering Act 4(a) and 4(b):

(Extortion of Fred "Sarge" Ferris)

With respect to the extortion of Fred "Sarge" Ferris, either of the following acts alone constitutes the commission of Racketeering Act Four:

Racketeering Act 4(a): From in or about March, 1988, until about April, 1989, within the Southern District of California, the District of Nevada, and elsewhere, defendants MICHAEL CLEMENT CARACCI, CHRIS PETTI, aka Chris George Poulos, JOHN PAUL SPILOTRO, CARMEN SALVATORE DINUNZIO, ANTHONY LOUIS DINUNZIO, and others, knowingly participated in the use of extortionate means to collect and attempt to collect an extension of credit from Fred "Sarge" Ferris, by collecting and attempting to collect from Fred "Sarge" Ferris payments for an alleged extension of credit by expressly and implicitly threatening to use violence and other criminal means to cause harm to the person, reputation, and

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2 property of Fred "Sarge" Ferris; in violation of
3 Title 18, United States Code, Sections 894 and 2.

4 Racketeering Act 4(b): From about August, 1987
5 until about April of 1988, within the Southern District
6 of California, the District of Nevada, and elsewhere,
7 defendants MICHAEL CLEMENT CARACCI, CHRIS PETTI, aka
8 Chris George Poulos, JOHN PAUL SPILOTRO, CARMEN SALVATORE
9 DINUNZIO, ANTHONY LOUIS DINUNZIO, and others, knowingly
10 travelled in interstate commerce, to wit, from California
11 to Nevada and back, and knowingly and intentionally
12 aided, abetted, counselled, commanded, induced, procured,
13 and willfully caused such travel, with intent to promote,
14 manage, establish, carry on and facilitate the promotion,
15 management, establishment, and carrying on of an unlawful
16 activity, to wit, the extortion of Fred "Sarge" Ferris,
17 in violation of Nevada Revised Statute § 207.190
18 ("Coercion"), and thereafter performed and attempted to
19 perform such extortion; in violation of Title 18, United
20 States Code, Sections 1952(a)(3) and 2.

21 Racketeering Act 5:
22 (Extortion of George Macey)

23 From about March, 1988 until May, 1988, within the
24 Southern and Central Districts of California, and elsewhere,
25 defendants MICHAEL CLEMENT CARACCI, CHRIS PETTI, aka Chris
26 George Poulos, and CARMEN SALVATORE DINUNZIO knowingly
27 participated in the use of extortionate means to collect and
28 attempt to collect an extension of credit from George Macey,

1
2 by collecting and attempting to collect from George Macey
3 payments for an extension of credit by expressly and
4 implicitly threatening to use violence and other criminal
5 means to cause harm to the person, reputation, and property of
6 George Macey; in violation of Title 18, United States Code,
7 Sections 894 and 2.

8 Racketeering Act 6:
9 (Conspiracy to Extort Robert Veltri)

10 From about September, 1987 until about March of 1988, within
11 the Southern and Central Districts of California, and
12 elsewhere, defendants MICHAEL CLEMENT CARACCI, CHRIS PETTI,
13 aka Chris George Poulos, and CARMEN SALVATORE DINUNZIO
14 knowingly conspired to participate in the use of extortionate
15 means to collect and attempt to collect an extension of credit
16 from Robert Veltri, by collecting and attempting to collect
17 from Robert Veltri payments for an extension of credit by
18 expressly and implicitly threatening to use violence and other

19 //

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1
2 criminal means to cause harm to the person, reputation, and
3 property of Robert Veltri; in violation of Title 18, United
4 States Code, Sections 894 and 2.

5 All in violation of Title 18, United States Code, Sections 1962(c)
6 and 1963.

7 DATED: January 9, 1992.

8 A TRUE BILL:

9
10 *Patricia Ann Kurop*
11 Foreperson

12 WILLIAM BRANIFF
13 United States Attorney

14 By: *Carol C. Lam*
15 CAROL C. LAM
16 Assistant U.S. Attorney

I hereby attest and certify on 1-9-92
That the foregoing document is a full, true and correct
copy of the original on file in my office and in my legal
custody.

17 WILLIAM W. LUDDY
18 CLERK, U.S. DISTRICT COURT
19 SOUTHERN DISTRICT OF CALIFORNIA
20 By *W. Lasse* Deputy

DECLARATION OF FRANK J. RAGEN

I, FRANK J. RAGEN, hereby declare as follows:

1. I was the attorney appointed to represent Michael Clement Caracci in the case of United States v. Samuel Anthony Carlisi, Criminal Case No. 92-0226-E.

2. I graduated from the University of San Diego School of Law in 1972. I was admitted to the California Bar and the Southern District of California in December, 1972. I represented indigent federal criminal defendants while I was a staff attorney at Federal Defenders of San Diego from 1973 until 1975. From 1975 to the present, I have confined my practice to criminal defense with the large majority of my practice being in federal court.

3. On April 19, 1993, Mr. Caracci entered a plea of guilty to Counts 1, 9, 11, 13, 14 and 15 of the Indictment in the above-captioned case, pursuant to a written plea agreement. I appeared with Mr. Caracci in court that day.

4. On July 6, 1993, Mr. Caracci was sentenced by this Court to seventy-one (71) months in custody. I also represented Mr. Caracci in court that day.

5. I reviewed the Sentencing Guidelines while negotiating the terms of the plea agreement with the government. I believed at the time the calculation of the guideline range for the offenses to which Mr. Caracci pleaded guilty were correctly calculated by the parties and the probation office. I have no reason to believe the calculations were incorrect. Prior to his entering his guilty plea, I explained to Mr. Caracci how the Sentencing Guidelines were calculated.

6. Prior to the entry of his guilty plea on April 19, 1993, I visited with Mr. Caracci at the Metropolitan Correctional Center and reviewed each and every term of the plea agreement, as is the practice I follow in every criminal case in which I represent a defendant who is pleading guilty. Mr. Caracci appeared to comprehend each term of the plea agreement as I explained it to him. I explained to him the plea agreement provided that if the court sentenced Mr. Caracci to seventy-one (71) months or less in custody, he would not have the right to appeal his conviction or sentence.

7. Prior to his sentencing, I explained to Mr. Caracci the sentencing arguments I was prepared to make on his behalf. I did make these arguments on his behalf which related to the correct

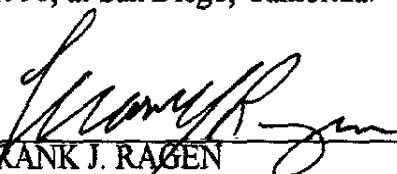
1 application of the guidelines with respect to his role in the offense, his criminal history category, and the
2 propriety of a three-level downward adjustment for acceptance of responsibility. I explained to Mr.
3 Caracci, and he indicated he understood, that those arguments might not be accepted by the court. I
4 reviewed the presentence report with him until he indicated he understood it.

5 8. Mr. Caracci told me it was his desire to plead guilty, even with the understanding he could
6 be sentenced to seventy-one (71) months in custody without the right to appeal that sentence.

7 9. Because the court sentenced Mr. Caracci to seventy-one (71) months in custody, I did not
8 file a notice of appeal on Mr. Caracci's behalf, nor did Mr. Caracci ever request that I file a notice of
9 appeal for him.

10 I declare under penalty of perjury that the foregoing is true and correct.

11 Executed this 16 day of September, 1996, at San Diego, California.

12
13 
14 FRANK J. RAGEN
Declarant
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)
) 92-0026-E-CRIM
 PLAINTIFF,)
)
 - V -) SAN DIEGO, CALIFORNIA
) JULY 6, 1993
 MICHAEL CLEMENT CARACCI,) 9:20 A.M.
)
 DEFENDANT.)
)
 * * * * *)

TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE WILLIAM B. ENRIGHT
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT: PAUL COOK, ESQ.
FOR THE DEFENDANT: FRANK RAGEN, ESQ.
COURT REPORTER: ISRAEL VAN BRAMER

1 P-R-O-C-E-E-D-I-N-G-S

2 DEPUTY CLERK: NUMBER FOUR ON CALENDAR, 92-0026,
3 THE UNITED STATES OF AMERICA VERSUS MICHAEL CLEMENT CARACCI,
4 ON FOR SENTENCING.

5 MR. RAGEN: GOOD MORNING, YOUR HONOR.

6 FRANK RAGEN ON BEHALF OF MR. MICHAEL CARACCI WHO IS
7 PERSONALLY PRESENT.

8 MR. COOK: GOOD MORNING, YOUR HONOR.

9 PAUL COOK FOR THE UNITED STATES.

10 THE COURT: ALL RIGHT. GENTLEMEN, I HAVE READ AND
11 CONSIDERED THE PRESENTENCE REPORT TOGETHER WITH THE
12 SUPPLEMENTS SUBMITTED BY BOTH THE GOVERNMENT AND THE
13 DEFENDANT.

14 HAVE YOU HAD AN OPPORTUNITY TO READ AND DISCUSS THE
15 PRESENTENCE REPORT WITH YOUR CLIENT, MR. RAGEN?

16 MR. RAGEN: I HAVE, YOUR HONOR.

17 THE COURT: IS THAT CORRECT, MR. CARACCI?

18 THE DEFENDANT: YES, SIR.

19 THE COURT: ALL RIGHT. DOES THE PROBATION OFFICE
20 HAVE A RECOMMENDATION IN THIS MATTER?

21 PROBATION OFFICER: YOUR HONOR, AS TO COUNT 1 AND
22 9, 60 MONTHS; AND AS TO COUNTS 11, 13, 14 AND 15, 87 MONTHS
23 ALL CONCURRENT WITH THREE YEARS SUPERVISED RELEASE TO FOLLOW,
24 AND NO FINE.

25 THE COURT: SAY AGAIN NOW?

1 PROBATION OFFICER: CYNTHIA HERNANDEZ FOR U.S.

2 PROBATION.

3 THE COURT: RIGHT. COUNTS 1 AND 9, 60 MONTHS.

4 PROBATION OFFICER: RIGHT.

5 THE COURT: CONCURRENT WITH EACH OTHER.

6 PROBATION OFFICER: THAT'S CORRECT.

7 THE COURT: THEN THE BALANCE WOULD BE WHAT?

8 PROBATION OFFICER: THEN COUNTS 11, 13, 14, 15: 87

9 MONTHS.

10 THE COURT: ALL RIGHT. THANK YOU.

11 PROBATION OFFICER: YOU'RE WELCOME.

12 THE COURT: ALL RIGHT. I'D WELCOME YOUR COMMENTS,

13 MR. RAGEN.

14 MR. RAGEN: THANK YOU, YOUR HONOR.

15 YOUR HONOR, AS THE COURT KNOWS FROM THE PROBATION

16 REPORT AND THE DOCUMENTS SUBMITTED, MICHAEL CARACCI IS 54

17 YEARS OF AGE. HE IS MARRIED. HE HAS ONE DAUGHTER WHO IS

18 RESIDING AT HOME AS SHE FINISHES HER EDUCATION.

19 I HAVE FILED A SENTENCING MEMORANDUM, YOUR HONOR.

20 AND I ALSO FILED A LETTER FROM DR. TALANO.

21 THE COURT: I RECEIVED IT.

22 MR. RAGEN: THANK YOU, YOUR HONOR.

23 YOUR HONOR, THERE WERE THREE SPECIFIC AREAS THAT

24 THE GOVERNMENT AND I LEFT OPEN, IF YOU WILL, FOR ARGUMENT

25 BEFORE YOUR HONOR AT THE TIME WE RESOLVED THE CASE. I TRIED

1 TO PUT ALL OF MY THOUGHTS INTO THE SENTENCING MEMORANDUM BUT
2 I WANT TO SUMMARIZE THEM HERE.

3 FIRST, THE GOVERNMENT IS AGREEABLE TO MR. CARACCI
4 RECEIVING TWO POINTS FOR ACCEPTANCE OF RESPONSIBILITY... I
5 HAVE ASKED FOR THREE POINTS FOR ACCEPTANCE OF
6 RESPONSIBILITY. THE COURT MAY RECALL THAT MR. CARACCI WAS
7 NOT ABLE TO GO TO TRIAL BECAUSE OF HIS MEDICAL PROBLEMS.

8 HE WAS IN A POSITION TO GO TO TRIAL THEREAFTER, YET
9 HE DID NOT DO THAT. HE ENTERED PLEAS TO COUNTS WHICH ENABLED
10 THE COURT TO SENTENCE HIM AS IF HE HAD GONE TO TRIAL AND BEEN
11 CONVICTED ON ALL COUNTS.

12 SO THE SENTENCING COMMISSION IN TERMS OF ADDRESSING
13 WHETHER HE SHOULD HAVE TWO POINTS OR THREE POINTS, THAT'S ONE
14 OF THE FACTORS THEY LOOK TO. DOES THE COURT HAVE ALL THE
15 SENTENCING OPTIONS AVAILABLE AND DID MR. CARACCI PLEAD GUILTY
16 TO SUFFICIENT COUNTS TO GIVE THE COURT THE DISCRETION IT
17 WOULD ORDINARILY HAVE IF HE HAD GONE TO TRIAL. HE DID THAT
18 HERE.

19 ALSO BY VIRTUE OF HIM HAVING PLED GUILTY TO THE
20 COUNTS HE PLED GUILTY TO, THAT REALLY FORECLOSED A SECOND
21 TRIAL.

22 I THINK THE GOVERNMENT'S POSITION ESSENTIALLY WAS
23 THEY WANTED MR. CARACCI TO BE CONVICTED OF A CERTAIN NUMBER
24 OF COUNTS AND HAVE A CERTAIN AMOUNT OF TIME IN CUSTODY AND IF
25 HE HAD NOT DECIDED TO PLEAD GUILTY, THEY WOULD HAVE TAKEN

1 OTHER PEOPLE TO TRIAL A SECOND TIME AS WELL.

2 SO I THINK HE SHOULD RECEIVE THE THREE-LEVEL
3 REDUCTION FOR ACCEPTANCE OF RESPONSIBILITY.

4 THE OTHER AREA, YOUR HONOR, THAT I THINK IS
5 IMPORTANT DEALS WITH MR. CARACCI'S ROLE IN THE OFFENSE. THE
6 GOVERNMENT AND PROBATION GIVE HIM AN ADDITIONAL THREE LEVELS
7 FOR SUPERVISION AND MANAGEMENT. I HAVE GONE THROUGH HUGE
8 NUMBERS OF THE TRANSCRIPTS OF TELEPHONE CONVERSATIONS BETWEEN
9 HE AND MR. PETTI.

10 AND MY ANALYSIS OF THAT IS THAT HE AND MR. PETTI,
11 OF COURSE, ARE TALKING IN ALL SORTS OF TERMS. BUT IN
12 ESSENCE, HE PASSES MESSAGES ALONG TO MR. PETTI. HE IS NOT A
13 DECISION-MAKER.

14 HE IS NOT SOMEONE WHO EXERCISES DISCRETION, I MEAN,
15 IN THE SENSE OF HAVING THE OPPORTUNITY TO TELL MR. PETTI TO
16 TURN LEFT OR TURN RIGHT. IF THAT QUESTION IS ASKED OF HIM,
17 HE SAYS, I'LL GET BACK TO YOU AND THEN LATER RELAYS THE
18 MESSAGE.

19 SO I DON'T THINK A THREE-LEVEL INCREASE FOR
20 MANAGEMENT AND SUPERVISION IS APPROPRIATE FOR MR. CARACCI.

21 I THINK THAT IS ALSO ESPECIALLY TRUE, YOUR HONOR,
22 IN LIGHT OF THE SENTENCES RECEIVED BY PEOPLE ABOVE HIM IN THE
23 ORGANIZATION AS THE GOVERNMENT DETAILS IT.

24 THE COURT MAY RECALL THAT MR. DIFRONZO AND MR.
25 ANGELINI RECEIVED 37-MONTH SENTENCES. I THINK IT'S SOMEWHAT

1 INCONGRUOUS FOR MR. CARACCI, WHO THE GOVERNMENT SAYS IS A
2 SOLDIER IN AN ORGANIZATION HEADED BY THESE OTHER PEOPLE TO
3 RECEIVE A SENTENCE GREATLY IN EXCESS OF THE SENTENCE RECEIVED
4 BY THE OTHERS.

5 IT'S NOTEWORTHY THAT MR. CARACCI WAS THE PERSON ON
6 THE TELEPHONE, AND PERHAPS HAD GREATER EXPOSURE THAN SOME OF
7 THE OTHERS.

8 BUT IF THE SENTENCING COMMISSION SETS FORTH THAT
9 PEOPLE ARE SUPPOSED TO BE SENTENCED IN CONFORMITY WITH THEIR
10 ROLE IN THE OFFENSE, THE SENTENCE THAT I HAVE SUBMITTED IN MY
11 SENTENCING MEMORANDUM, I WOULD SUGGEST TO YOU, IS MORE IN
12 KEEPING WITH THAT.

13 THE OTHER POINT, YOUR HONOR, THAT I THINK IS
14 IMPORTANT TO MAKE IS THAT, WHAT LEVEL IS MR. CARACCI AND HIS
15 CRIMINAL OFFENSE CATEGORY?

16 HE WAS RELEASED FROM CUSTODY ON THE 1963 OFFENSE --
17 BURGLARY, I BELIEVE IT WAS -- IN OCTOBER 1971. FIFTEEN YEARS
18 FROM THAT DATE WOULD BE OCTOBER OF 1986. THE FIRST MENTION
19 OF MIKE CARACCI IN THIS INDICTMENT OR IN THE DISCOVERY IS
20 MARCH OF 1987. THE ONLY EVENT THAT OCCURS PRIOR TO MARCH OF
21 1987 IS A MEETING IN JULY OF 1985 ALLEGEDLY ATTENDED BY MR.
22 DEFRONZO, MR. CARLISI AND MR. ANGELINI; NO CONNECTION.

23 MR. CARACCI AT THAT POINT IN TIME, YOUR HONOR, WAS
24 RESIDING IN LOS ANGELES. THE COURT MAY RECALL FROM THE BOND
25 HEARING THAT HE RESIDED IN LOS ANGELES FROM 1973 THROUGH

1 1986.

2 THE GUIDELINES SET FORTH THAT THE 15 YEARS INVOLVES
3 THE DEFENDANT'S COMMENCEMENT OF THE INSTANT OFFENSE.
4 ACCORDING TO THE DISCOVERY, HIS INVOLVEMENT IN THIS OFFENSE
5 WOULD BE IN MARCH OF 1987, AND NOT PRIOR TO OCTOBER OF 1986.

6 I WOULD SUBMIT TO YOUR HONOR THAT HE SHOULD NOT
7 RECEIVE A THREE-LEVEL INCREASE FOR HAVING A PRIOR RELEASE
8 FROM PRISON WITHIN THE 15 YEARS. AS SUCH, HE SHOULD BE A
9 LEVEL 1.

10 YOUR HONOR, AS I PUT TOGETHER THE GUIDELINES FOR
11 THE NUMEROUS OFFENSES TO WHICH MR. CARACCI PLED GUILTY, HE
12 SHOULD BE A BASE OFFENSE LEVEL 20. HE SHOULD RECEIVE FIVE
13 LEVELS FOR THE MULTIPLE COUNTS TO WHICH HE PLEAD GUILTY.

14 HE SHOULD RECEIVE A THREE-POINT REDUCTION FOR
15 ACCEPTANCE OF RESPONSIBILITY AND HE SHOULD BE A CRIMINAL
16 HISTORY CATEGORY 1, BASE OFFENSE LEVEL 22, WHICH MAKES THE
17 SENTENCING RANGE 41 TO 51 MONTHS.

18 I WOULD SUBMIT, YOUR HONOR, THAT A SENTENCE OF 41
19 MONTHS IS IN KEEPING WITH HIS ROLE IN THE OFFENSE, THE
20 SENTENCES RECEIVED BY OTHER PEOPLE INVOLVED IN THIS OFFENSE,
21 HIS AGE, HIS MEDICAL CONDITION, AND HIS WILLINGNESS TO ADMIT
22 HIS CULPABILITY BY PLEADING GUILTY TO MULTIPLE COUNTS.

23 THE COURT: ALL RIGHT. THANK YOU, MR. RAGEN.

24 MR. CARACCI, DO YOU HAVE ANY COMMENTS, SIR, OR
25 ANYTHING YOU THINK I SHOULD KNOW OF AT THIS TIME?

1 THE DEFENDANT: NO, I DON'T.

2 THE COURT: ALL RIGHT. THANK YOU.

3 WHO SPEAKS FOR THE GOVERNMENT?

4 MR. COOK: I DO, YOUR HONOR. IF I MAY ADDRESS
5 THOSE THREE ISSUES THAT MR. RAGEN HAS RAISED?

6 AS TO HE ACCEPTANCE OF RESPONSIBILITY, YOUR HONOR,
7 THE GOVERNMENT CONCURS WITH THE PRESENTENCE REPORT AND WITH
8 ITS STATEMENT OF THE PLEA AGREEMENT THAT HE SHOULD BE GIVEN
9 TWO POINTS FOR ACCEPTANCE BY ADMITTING HIS INVOLVEMENT IN
10 THIS.

11 HOWEVER, THE GOVERNMENT WOULD BE OPPOSED TO GIVING
12 HIM THE EXTRA POINT AS I DON'T FEEL THAT HE QUALIFIES. THE
13 REQUIREMENTS FOR RECEIVING A THREE-POINT ACCEPTANCE OF
14 RESPONSIBILITY ARE THAT THE DEFENDANT TIMELY PROVIDES
15 COMPLETE INFORMATION TO THE GOVERNMENT CONCERNING HIS OWN
16 INVOLVEMENT IN THE EVENTS, OR TIMELY NOTIFIES THE AUTHORITIES
17 OF HIS INTENT TO ENTER A GUILTY PLEA.

18 NONE OF THOSE APPLY IN THIS CASE. JUST PRIOR TO
19 THE FIRST TRIAL, MR. CARACCI BECAME UNAVAILABLE TO GO TO
20 TRIAL WITH HIS CO-DEFENDANTS BECAUSE OF HIS HEART CONDITION.
21 UP TO THAT POINT, HE WAS GOING TO GO TO TRIAL WITH THOSE.
22 THERE WAS NO TIMELY NOTIFICATION THAT HE WAS GOING TO BE
23 PLEADING GUILTY AND SAVING THE GOVERNMENT THE TIME AND
24 EXPENSE.

25 AS TO WHETHER OR NOT HE HAS TIMELY PROVIDED

1 COMPLETE INFORMATION, HE CLEARLY DID NOT MAKE ANY STATEMENTS
2 WHEN HE WAS ARRESTED. HE DID NOT SAY ANYTHING UNTIL THE TIME
3 OF THE ENTRY OF HIS GUILTY PLEA REGARDING HIS INVOLVEMENT IN
4 THIS CRIME, AFTER THE FIRST TRIAL AND PRIOR TO THE DATE SET
5 FOR THE SECOND TRIAL. SO HE HAS NOT TIMELY COOPERATED NOR
6 TIMELY INDICATED THAT HE WOULD PLEAD GUILTY.

7 AND IF THE COURT LOOKS AT HIS STATEMENT OF THE
8 OFFENSE ON PAGE 11, HE CLEARLY ADMITS HIS INVOLVEMENT IN
9 GENERAL TERMS IN RINCON, THE MAIL FRAUD AND THE WIRE FRAUD
10 THERE AND HE WAS INVOLVED IN ATTEMPTS TO COLLECT GAMBLING
11 DEBTS.

12 BUT IT CERTAINLY DOESN'T GO INTO ANY GREAT DETAIL
13 AS TO HIS INVOLVEMENT. AND AS A MATTER OF FACT, HE DECLINES
14 TO IDENTIFY THE ACTUAL ROLES OF THE COCONSPIRATORS SAYING
15 HE'D ONLY DISCUSS HIS OWN INVOLVEMENT.

16 I DON'T THINK THAT, GIVEN THOSE SET OF FACTS, HE
17 MERITS THE ADDITIONAL POINT FOR ACCEPTANCE OF
18 RESPONSIBILITY.

19 AS TO HIS ROLE ADJUSTMENT, THE GOVERNMENT AGAIN
20 AGREES WITH THE PROBATION RECOMMENDATION THAT HE BE GIVEN
21 THREE POINTS FOR MANAGER OR SUPERVISOR.

22 IN LOOKING AT THE OVERALL SCHEME, YOUR HONOR, THIS
23 DEFENDANT WAS NOT -- WAS INVOLVED NOT ONLY IN THE RINCON MAIL
24 AND WIRE FRAUD, BUT HE WAS INVOLVED IN THREE EXTORTIONS AND
25 THE UMBRELLA CHARGE OF RACKETEERING. THOSE ARE THE CHARGES

1 WHICH HE PLED GUILTY TO.

2 THAT CLEARLY SETS HIM IN A DIFFERENT POSTURE THAN
3 THE CO-DEFENDANTS WHO RECEIVED 37 MONTHS; DEFENDANTS ANGELINI
4 AND DIFRONZO. THEIR ONLY OFFENSES OF CONVICTION WERE FOR THE
5 MAIL AND WIRE FRAUD AND THE CONSPIRACY TO COMMIT THE SAME.

6 HERE, WE HAVE ADDITIONAL MORE SERIOUS OFFENSES OF
7 EXTORTION AND RACKETEERING CHARGES.

8 AS TO THE CO-DEFENDANTS WITH WHOM HE WAS INVOLVED,
9 IT IS INTERESTING TO NOTE THAT DEFENDANT DIFRONZO WHO WAS, BY
10 THE GOVERNMENT'S CONTENTION, HIS IMMEDIATE SUPERVISOR, HIS
11 CREW CHIEF AND THE NUMBER TWO MAN IN THE CHICAGO MOB, THE MAN
12 TO WHOM HE REPORTED AND ANSWERED, RECEIVED FOUR POINTS FOR
13 HIS ROLE.

14 THE OTHER CO-DEFENDANTS WHO HAD SIMILAR POSITIONS,
15 DEFENDANTS PETTI AND ANGELINI, ALSO RECEIVED A THREE-POINT
16 ADJUSTMENT FOR MANAGER AND SUPERVISOR. CLEARLY, THIS
17 DEFENDANT IS IN NO LESS POSTURE THAN DEFENDANTS ANGELINI AND
18 PETTI.

19 HE WAS DIRECTING THE OPERATION FROM CHICAGO, THE
20 MAN RELAYING THE ORDERS TO CHRIS PETTI HERE; CLEARLY,
21 SUPERVISING AND MANAGING CHRIS PETTI'S OPERATIONS HERE IN SAN
22 DIEGO.

23 HE WAS ALSO RELAYING INFORMATION REGARDING THE
24 ACTIVITIES REGARDING THE DINUNZIO BROTHERS. SO HE WOULD BE
25 SUPERVISING THEM AS WELL; AND GLEN CALAC HERE IN SAN DIEGO,

1 AND NICK DEPENTO, THE ATTORNEY INVOLVED.

2 CLEARLY, THERE WERE FIVE MORE PEOPLE INVOLVED IN
3 THIS OVERALL OPERATION WITH THOSE HERE IN SAN DIEGO, THE
4 DEFENDANT AND JOHN DIFRONZO AND ANGELINI IN CHICAGO.

5 SO THERE WERE THE PREREQUISITE FIVE. HIS ROLE AS A
6 MANAGER WAS RELAYING MESSAGES, GIVING DIRECTIONS AND ORDERS
7 TO CHRIS PETTI AS TO NOT ONLY THE MAIL FRAUD, BUT TO WHAT TO
8 DO ON THE EXTORTIONS.

9 THE GOVERNMENT INCLUDED IN ITS SENTENCING
10 MEMORANDUM, YOUR HONOR, A NUMBER OF TRANSCRIPTS OF TAPES
11 WHICH WERE NOT PLAYED AT TRIAL REGARDING THE OTHER EXTORTIONS
12 TO WHICH THIS DEFENDANT HAS PLEAD GUILTY. THOSE CLEARLY SHOW
13 THAT HE WAS DIRECTING CHIS PETTI TO STAY ON THIS PERSON, GO
14 STRONG, GET HIM, CHICAGO WANTS THAT MONEY; CLEARLY, A
15 SUPERVISORY ROLE.

16 AS TO THE LAST ISSUE OF THE CRIMINAL HISTORY,
17 AGAIN, THE GOVERNMENT WOULD CONCUR WITH THE PRESENTENCE
18 RECOMMENDATION THAT THE DEFENDANT IS A CATEGORY 2 AND TAKES A
19 SLIGHTLY DIFFERENT POSTURE AS TO THE MATHEMATICS INVOLVED.

20 THE DEFENDANT, YOUR HONOR, WAS SENTENCED TO
21 FOUR-TO-TEN YEARS ON A BURGLARY CHARGE. HE WAS RELEASED TO
22 WORK RELEASE IN OCTOBER OF 1961, BUT WAS NOT PAROLED UNTIL
23 APRIL 24TH OF 1972, AND THEN FULLY DISCHARGED FROM PAROLE IN
24 1973.

25 TAKING THE EARLIER PAROLE DATE AS THE DATE WHICH HE

1 WOULD AT LEAST BE OUT OF INCARCERATION, THAT WOULD BE APRIL
2 OF 1972, WHICH WOULD BE 15 YEARS TO PUT IT APRIL 24TH, 1987.

3 HIS FIRST INVOLVEMENT HERE WAS MARCH 21, 1987 WHEN
4 HE CAME TO SAN DIEGO, MET WITH CHRIS PETTI AND OTHERS AND
5 WENT UP TO ESCONDIDO AND WERE FILMED. I BELIEVE THAT WAS
6 SHOWN AT TRIAL, AND THEN ON TO THE RINCON RESERVATION.

7 SO HE FALLS WITHIN THAT 15-YEAR PERIOD AND THE
8 GOVERNMENT WOULD ARGUE THAT HE SHOULD HAVE A CATEGORY 2; AND
9 IN THE ALTERNATIVE, CLEARLY, THIS IS GROUNDS FOR THE COURT TO
10 DEPART UPWARD IF YOU TREAT HIM AS A 1.

11 HIS BURGLARY CONVICTION AND SHOPLIFTING CONVICTIONS
12 AND BURGLARY CONVICTIONS INVOLVED GUNSHOTS FIRED; CLEARLY A
13 GROUND TO DEPART UPWARD TO A CATEGORY 2.

14 THE GOVERNMENT STANDS BY ALL THE RECOMMENDATIONS
15 AND FINDINGS IN THE PRESENTENCE REPORT WITH THE EXCEPTION
16 THAT THE GOVERNMENT'S RECOMMENDATION, YOUR HONOR, ON COUNTS
17 11, 13, 14, AND 15 WOULD BE FOR 71 MONTHS. THAT WAS PART OF
18 THE PLEA AGREEMENT.

19 THE GOVERNMENT AGREED TO RECOMMEND A SENTENCE NO
20 HIGHER THAN 71 MONTHS. THE DEFENDANT AGREED THAT IF HE
21 RECEIVED NO GREATER THAN THAT, HE WOULD WAIVE HIS RIGHT TO
22 APPEAL. THE GOVERNMENT STANDS BY THAT AGREEMENT AND WOULD SO
23 RECOMMEND.

24 THE COURT: THE PLEA AGREEMENT WAS THAT IT WOULD BE
25 -- THE GOVERNMENT WOULD RECOMMEND NO MORE THAN 71 MONTHS?

1 THERE WAS NO AGREEMENT AS TO LOW END OF THE
2 GUIDELINES, OF APPLICABLE GUIDELINES, OR ANYTHING LIKE THAT
3 IN THE PLEA AGREEMENT?

4 MR. COOK: THERE WERE SOME BASIC CALCULATIONS BUT
5 NONE OF THOSE HAVE BEEN DISPUTED AT OUR END. THE GOVERNMENT
6 AGREED THAT WE WOULD RECOMMEND TWO POINTS FOR ACCEPTANCE BUT
7 COUNSEL WAS FREE TO ARGUE THE GREATER.

8 THE GOVERNMENT AGREED THAT IT WOULD RECOMMEND A
9 CATEGORY 2, BUT COUNSEL WAS FREE TO ARGUE FOR EITHER CATEGORY
10 1 OR A DOWNWARD DEPARTURE.

11 AND THE GOVERNMENT AGREED THAT IT WOULD RECOMMEND A
12 THREE-POINT ROLE ADJUSTMENT BUT THAT COUNSEL WAS FREE TO
13 ARGUE FOR A LESSER ROLE ADJUSTMENT.

14 AS TO OTHER BASE OFFENSE LEVELS AND OTHER
15 CALCULATIONS, WE ARE ALL IN AGREEMENT, YOUR HONOR.

16 THE COURT: ALL RIGHT.

17 ANYTHING FURTHER, MR. RAGEN?

18 MR. RAGEN: YOUR HONOR, I TRIED TO SET FORTH IN MY
19 SENTENCING MEMORANDUM THE THREE AREAS THAT WE DID AGREE TO
20 PRESENT TO YOUR HONOR. THE BALANCE OF IT IS NOT IN DISPUTE.

21 YOUR HONOR, I DON'T THINK IT'S APPROPRIATE TO RAISE
22 THE CRIMINAL HISTORY CATEGORY BASED ON UNDERSTATEMENT OF HIS
23 CRIMINAL HISTORY BASED ON A 1963 BURGLARY AND TWO
24 MISDEMEANORS IN 1968. I THINK THAT'S CARRYING THE MATTER TOO
25 FAR.

1 THE COURT MAY RECALL BETTER THAN I THAT MR. PETTI
2 WAS THE INDIVIDUAL WHO KNEW MR. TONY SPILOTRO FROM LAS VEGAS
3 AND THAT IT WAS MR. PETTI WHO, AFTER MR. SPILOTRO'S DEATH,
4 TRIED TO GO TO THESE VARIOUS PEOPLE AND COLLECT MONEY.

5 IT WAS MR. CARACCI WHO SIMPLY RELAYED THE MESSAGES
6 FROM MR. PETTI. HE WAS NOT A DECISION-MAKER. AND I THINK
7 THAT, YOU KNOW, OVERALL, YOUR HONOR, IF YOU LOOK AT HIS ROLE
8 IN THIS, HE DOESN'T DESERVE A SENTENCE THAT THE GOVERNMENT IS
9 SEEKING HERE COMPARED TO THE OTHERS, HIGHER RANKING
10 INDIVIDUALS HAVE RECEIVED.

11 I'D SUBMIT IT, YOUR HONOR.

12 THE COURT: THANK YOU.

13 WELL, GENTLEMEN, HERE IS MY VIEW OF IT: I
14 APPRECIATE THE GOVERNMENT'S POSITION AND I WOULD RECOGNIZE
15 THAT PLEA AGREEMENT IN THIS CASE IS BEING REASONABLE AND
16 APPROPRIATE AND CONSISTENT WITH THE UNDERLYING POLICIES AND
17 PROCEDURES OF THE GUIDELINES.

18 I FIND, AS THE PARTIES HAVE AGREED, THAT THE BASIC
19 OFFENSE LEVEL IS 20; THE MULTIPLE-COUNT ENHANCEMENT OF FIVE
20 OFFENSE LEVELS.

21 I WOULD AGREE WITH THE GOVERNMENT AND THE PROBATION
22 OFFICE THAT SHOULD BE A THREE-LEVEL ADJUSTMENT FOR MANAGEMENT
23 AND SUPERVISION BY MR. CARACCI. I DO THINK HE WAS A MANAGER
24 AND I THINK THAT THAT'S AN APPROPRIATE ADJUSTMENT; WHICH
25 LEADS US TO AN OFFENSE LEVEL THEN OF 28.

1 I WOULD, HOWEVER, GIVE THE DEFENDANT A THREE-LEVEL
2 DOWNWARD ADJUSTMENT FOR ACCEPTANCE OF RESPONSIBILITY. I HAVE
3 IN MIND THE RESOLUTION BY MR. CARACCI WHEN HE WAS CLEARED BY
4 HIS DOCTORS AND THE SUBSEQUENT RESOLUTION OF THE ENTIRE
5 MATTER, I BELIEVE, WITH THE ENTRY OF HIS PLEA. I DO THINK HE
6 WOULD BE ENTITLED TO A THREE-LEVEL ADJUSTMENT DOWNWARD FOR
7 ACCEPTANCE OF RESPONSIBILITY.

8 I WOULD FIND THAT THE CRIMINAL HISTORY CATEGORY IS
9 A LEVEL 2, BECAUSE I AGREE WITH THE ANALYSIS MADE BY THE
10 PRESENTENCE REPORT. I WOULD THINK THAT THAT CRIMINAL HISTORY
11 CATEGORY IS APPROPRIATE.

12 THAT WOULD GIVE US, UNDER THE GUIDELINES, AN
13 OFFENSE LEVEL OF 25 WITH THAT CRIMINAL HISTORY CATEGORY --
14 GIVES A RANGE OF 63 TO 78 MONTHS.

15 I'M MINDFUL OF THE GOVERNMENT'S RECOMMENDATION OF
16 71 MONTHS WHICH IS AN APPROXIMATE MIDPOINT OF THAT CATEGORY.
17 I THINK UNDER ALL THE CIRCUMSTANCES OF THIS CASE, THAT IS A
18 REASONABLE AND APPROPRIATE TERM IN CUSTODY.

19 MR. CARACCI, I AM MINDFUL OF YOUR FAMILY'S
20 SITUATION. I AM IMPRESSED WITH YOUR WIFE AND YOUR DAUGHTER
21 AND THEIR ACCOMPLISHMENTS. I RECOGNIZE THE VALIDITY OF YOUR
22 MEDICAL SITUATION. I HAVE CONSIDERED THOSE MATTERS.

23 I ALSO HEARD THE TAPES, AND THE TAPES IN THEIR
24 ENTIRETY ARE, I'M SURE, TERRIFYING TO THE UNINITIATED. THERE
25 IS A CASUALNESS TO THE VIOLENCE THAT UNDERLIES THOSE TAPES

1 THAT CAME THROUGH TO THE JURY. I DON'T THINK THE JURY WOULD
2 HAVE ANY TROUBLE WITH YOUR CASE HAD IT BEEN BEFORE THEM FOR
3 RESOLUTION.

4 SO I THINK YOU KNEW WHAT YOU WERE ABOUT, AND I
5 THINK TODAY IS THE DAY WE SETTLE THE ACCOUNTS. I THINK YOU
6 HAVE COME FORWARD AND ACCEPTED YOUR RESPONSIBILITY. I'VE
7 TRIED TO RECOGNIZE THAT.

8 BUT I DO THINK UNDER ALL THE CIRCUMSTANCES, THE
9 PLEA AGREEMENT IN THIS CASE WITH THE LEVEL OF IMPRISONMENT IS
10 APPROPRIATE. THEREFORE, I INTEND TO FOLLOW IT.

11 SO I WOULD SELECT FROM THAT RANGE. AND THAT RANGE
12 BEING IN 63 TO 78 MONTH CATEGORY, I'D SELECT 71 MONTHS AS AN
13 APPROPRIATE DISPOSITION IN THIS CASE.

14 HAVING SAID THAT, MR. RAGEN, IS THERE ANY LEGAL
15 CAUSE WHY JUDGEMENT SHOULD NOT NOW BE PRONOUNCED?

16 MR. RAGEN: I KNOW OF NO LEGAL CAUSE, YOUR HONOR.

17 THE COURT: PURSUANT TO THE SENTENCING REFORM ACT
18 OF 1984, IT IS THE JUDGMENT OF THE COURT THAT THE DEFENDANT
19 BE COMMITTED TO THE BUREAU OF PRISONS FOR A TERM OF 71
20 MONTHS.

21 THIS 71 MONTHS WOULD BE CALCULATED AS FOLLOWS:
22 THAT WOULD BE AS TO COUNTS 11, 13, 14 AND 15, TO RUN
23 CONCURRENTLY WITH ONE ANOTHER AND TO RUN CONCURRENTLY WITH
24 COUNTS 1 AND 9.

25 IS THAT AN APPROPRIATE RESOLUTION ON THE COUNTS --

1 MR. COOK: YES, -IT IS, YOUR HONOR.

2 THE COURT: -- MR. COOK?

3 ADDITIONALLY, THERE WOULD BE A PERIOD OF SUPERVISED
4 RELEASE FOR A PERIOD OF THREE YEARS UPON THE FOLLOWING TERMS
5 AND CONDITIONS: THE DEFENDANT OBEY ALL LAWS, LOCAL, STATE
6 AND FEDERAL; THAT HE SUBMIT TO SEARCH OF HIS PERSON OR HIS
7 PROPERTY CONDUCTED IN A REASONABLE MANNER AT A REASONABLE
8 TIME BY A PROBATION OFFICER;

9 THAT HE PARTICIPATE IN A DRUG AND ALCOHOL ABUSE
10 PROGRAM AS REQUIRED BY THE PROBATION OFFICE WHICH WOULD
11 INCLUDE TESTING; THAT HE NOT POSSESS FIREARMS OR EXPLOSIVE
12 DEVICES OR OTHER DANGEROUS WEAPONS; THAT HE PROVIDE COMPLETE
13 DISCLOSURE OF PERSONAL AND BUSINESS FINANCIAL RECORDS IF
14 REQUESTED BY THE PROBATION OFFICE;

15 AND LASTLY, THAT HE NOT ASSOCIATE WITH ANY MEMBERS
16 OR ASSOCIATES OR AFFILIATES OF ANY CHICAGO ORGANIZED CRIME
17 FAMILY.

18 DO YOU UNDERSTAND THOSE TO BE THE CONDITIONS OF
19 SUPERVISED RELEASE, MR. CARACCI?

20 THE DEFENDANT: YES, SIR.

21 MR. RAGEN: YOUR HONOR, WITH REGARD TO THAT LAST
22 CONDITION.

23 THE COURT: YES.

24 MR. RAGEN: HE HAS --

25 THE COURT: EXCEPT FAMILY MEMBERS.

1 MR. RAGEN: THANK YOU, YOUR HONOR.

2 THE COURT: I'M MINDFUL OF THE FACT OF THE
3 RELATIONSHIP WITH MR. ANGELINI.

4 ADDITIONALLY, THERE WOULD BE A SPECIAL PENALTY
5 ASSESSMENT OF \$50 FOR EACH OF THE COUNTS FOR WHICH THE
6 DEFENDANT STANDS CONVICTED.

7 IS THERE ANYTHING FURTHER ASIDE FROM ADVISING THE
8 DEFENDANT OF HIS RIGHTS ON APPEAL, MR. RAGEN?

9 MR. RAGEN: YES, YOUR HONOR. THE COURT KNOWS OF
10 HIS MEDICAL CONDITION. HE IS IN THE PROCESS OF TRYING TO
11 ARRANGE WITH DR. TALANO TO HAVE THE REQUISITE RECORDS
12 PROVIDED TO THE INSTITUTIONS AND TO WHEREVER HE IS
13 INCARCERATED.

14 HE WANTS TO BE ABLE TO BE INCARCERATED ON THE WEST
15 COAST. SO WE'D ASK THE COURT FOR A RECOMMENDATION OF
16 INCARCERATION ON THE WEST COAST IF THAT'S POSSIBLE WITH THE
17 BUREAU OF PRISONS.

18 I AM ALSO GOING TO ASK THE COURT IF HE COULD BE
19 ALLOWED TO SELF-SURRENDER. AS THE COURT KNOWS, HE'S BEEN OUT
20 ON \$500,000 BOND AND HE'S MADE EVERY APPEARANCE. HE'S FLOWN
21 HERE REGULARLY AND COOPERATED COMPLETELY.

22 THE COURT: WHAT'S THE GOVERNMENT'S POSITION?

23 MR. COOK: YOUR HONOR, PER THE PLEA AGREEMENT, WE
24 AGREED TO SPECIFICALLY DEFER TO THE COURT ON THE ISSUES OF
25 DESIGNATION AND SELF-SURRENDER.

1 THE COURT: ALL RIGHT. I HAVE NO DOUBT THAT MR.
2 CARACCI WILL KEEP HIS COMMITMENTS, IF I HAVE YOUR WORD, MR.
3 CARACCI.

4 DO I HAVE YOUR WORD THAT IF I SUSPEND THE EXECUTION
5 OF THE SENTENCE AND PERMIT YOU TO SELF-SURRENDER, DO I HAVE
6 YOUR WORD THAT YOU WILL SURRENDER ON THE DATE DESIGNATED,
7 SIR?

8 THE DEFENDANT: YOU DO, YOUR HONOR.

9 THE COURT: ALL RIGHT. NORMALLY THAT WOULD TAKE
10 APPROXIMATELY A MONTH; IS CORRECT, MR. RAGEN?

11 MR. RAGEN: I THINK IT TAKES A LITTLE LONGER THAT
12 THAT, YOUR HONOR. I'M NOT CERTAIN OF THE EXACT NUMBER OF
13 DAYS. IF WE COULD HAVE SIX WEEKS, I THINK THAT WOULD BE
14 ADEQUATE.

15 THE COURT: LET'S SAY AUGUST THE 9TH.

16 MR. RAGEN: ALL RIGHT.

17 THE COURT: THE CUSTODY ORDERED TODAY WOULD BE
18 SUSPENDED UNTIL AUGUST THE 9TH AT 9:00 O'CLOCK, AT WHICH TIME
19 IF THE DEFENDANT HAS NOT PREVIOUSLY SURRENDERED TO THE BUREAU
20 OF PRISONS, HE WILL SURRENDER DIRECTLY TO THE CLERK OF THIS
21 COURT ON AUGUST THE 9TH AT 9:00 O'CLOCK.

22 DO UNDERSTAND THAT, MR. CARACCI?

23 THE DEFENDANT: YES, I DO.

24 THE COURT: ALL RIGHT. I WOULD LOOK TO YOU, MR.
25 RAGEN, TO MAKE ARRANGEMENTS FOR THE MARSHAL TODAY SO THAT

1 THEY CAN BEGIN THAT PROCESS.

2 I WOULD DECLINE TO SPECIFY A SPECIFIC INSTITUTION
3 TO THE BUREAU OF PRISONS. I'LL LET YOU DISCUSS THAT WITH A
4 REPRESENTATIVE HERE AT M.C.C.

5 IF THERE IS SOME FURTHER ACTION REQUESTED THAT YOU
6 FEEL APPROPRIATE, I WOULD HAPPY TO DISCUSS THAT REQUEST WITH
7 YOU AND MR. COOK. BUT I WOULD DECLINE TO PUT IT IN THE
8 JUDGMENT. I WILL AWAIT THE INITIAL INFORMAL DISCUSSIONS. I
9 THINK THAT THAT WOULD BE AN APPROPRIATE WAY TO PROCEED.

10 IS THERE ANYTHING FURTHER THEN ASIDE FROM ADVISING
11 THE DEFENDANT OF HIS RIGHTS ON APPEAL, MR. COOK?

12 MR. COOK: THE REMAINING COUNTS, YOUR HONOR, THE
13 GOVERNMENT MOVES TO DISMISS THOSE.

14 THE COURT: ON MOTION OF THE GOVERNMENT, THE
15 REMAINING COUNTS MAY BE DISMISSED.

16 MR. RAGEN: YOUR HONOR, AS TO COUNTS 1 AND 9, I
17 THINK THOSE ARE FIVE-YEAR MAXIMUM COUNTS. IS IT 60 MONTHS ON
18 THOSE CONCURRENTLY?

19 THE COURT: YES.

20 MR. RAGEN: THANK YOU.

21 THE COURT: I WOULD ADVISE YOU, MR. CARACCI, IF YOU
22 DESIRE TO APPEAL THE JUDGMENT OF THE COURT, YOU MUST DO SO
23 WITHIN TEN DAYS OF THIS DATE. IF YOU DON'T HAVE FUNDS TO PAY
24 FOR THE TRANSCRIPTS ON APPEAL OR HIRE A LAWYER, UPON PROPER
25 APPLICATION, THOSE MATTERS WILL BE CONSIDERED BY THE COURT.

1 IN ANY EVENT, DO YOU UNDERSTAND, SIR, THAT IF YOU
2 DESIRE TO APPEAL, YOU MUST DO SO WITHIN TEN DAYS OF THIS
3 DATE?

4 THE DEFENDANT: YES, I DO.

5 THE COURT: ALL RIGHT. AM I CORRECT THAT THERE IS
6 A PLEA AGREEMENT, THAT THERE IS A WAIVER OF APPEAL THAT IS
7 ALSO PART OF THE PLEA AGREEMENT?

8 MR. COOK: YES, YOUR HONOR, THERE IS.

9 THE COURT: THAT IS CORRECT, MR. RAGEN?

10 MR. RAGEN: YES, YOUR HONOR.

11 THE COURT: IS THAT ALSO YOUR UNDERSTANDING, SIR?

12 THE DEFENDANT: YES.

13 THE COURT: IS THERE ANYTHING FURTHER TODAY,
14 GENTLEMEN?

15 MR. COOK: NOTHING FOR THE GOVERNMENT.

16 THE COURT: IF NOT, THANK YOU VERY MUCH, GENTLEMEN.
17 THAT WILL BE THE ORDER.

18 * * * * *

19 (HEARING RECESSED AT 9:45 A.M.)

REPORTER'S CERTIFICATE

20 I, ISRAEL VANBRAMER, CERTIFY THAT THE FOREGOING IS THE
21 OFFICIAL TRANSCRIPT OF THE PROCEEDINGS IN THE ABOVE-ENTITLED
MATTER; AND THAT IT IS COMPLETE AND ACCURATE, TO THE BEST OF
MY KNOWLEDGE AND ABILITY.

22 
23 OFFICIAL COURT REPORTER
24
25

